

# ***PS LA 2023/2 - Communication protocols governing ATO objections***

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This Law Administration Practice Statement outlines the communication framework between objection officers and officers involved in making the original decision.

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

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

This Practice Statement sets out the framework governing the communications between objection officers and officers involved in making the original decision.

### 2. What are the overarching principles?

The ATO is committed to treating all taxpayers fairly and improving their experience with us when they lodge an objection. This includes objection officers being open and transparent about their decisions and decision-making processes, and providing a fair, objective and impartial review.

An objection process involves the objective and impartial reconsideration of how the law applies to the taxpayer's circumstances. This involves a balance of ensuring that decisions are made independently from the original decision-maker and that the objection officer is fully informed in coming to their decision.

In making an objection decision, the objection officer must ensure consistency and coherency in interpreting and applying the law and administration of the tax and superannuation system.

Better objection decisions are made when objection officers are fully informed through open and transparent communications. Objection officers are expected to take steps to be as informed as possible on the relevant facts, circumstances and supporting evidence. This may include engagement with the original decision-makers.

The objection officer must seek to understand the basis of the original decision and the reason it has been objected to. This should include an appropriate appreciation of the broader context of the case, including any relevant ATO strategies and risks.

### 3. What are the objection officer's responsibilities?

Where the objection is a review of an earlier ATO decision, the objection officer will:

- not have had any involvement in the original decision-making process

- maintain independence – this means the objection officer may discuss the original decision with the original decision-maker (where required), but the original decision-maker must not interfere in the resolution of the objection
- consult within the ATO, if needed, to draw on appropriate knowledge and expertise in forming an objection decision consistent with the Commissioner's view, and
- manage communication and engagement with other ATO officers who have been involved in the original decision in accordance with this Practice Statement, to ensure independence of the objection decision-making process.

### 4. What are open and transparent communications?

It is expected that the evidence and reasons supporting the original decision will have already been provided or explained to the taxpayer as part of the original decision-making process.

This should form part of the case records of the original decision and will be accessible to the objection officer from the outset of the objection.

Often, the case records, along with information provided by the taxpayer, will be sufficient for the objection officer to understand the context and reasons for the original decision.

However, the objection officer may contact the original decision-maker or other ATO officers involved in making the original decision (including internal advisors) to better understand the facts, evidence and reasons supporting the original decision.

Where new information or evidence is provided for the first time at objection, the objection officer should seek to understand the reason for the provision of the new information or evidence at the objection stage (rather than during the audit process).

The objection officer may share that new information or evidence with the original decision-maker.

In general, discussions between the objection officer and original decision-makers concerning that new information or evidence should involve how it would

have been taken into account if it had been available at the time of the original decision, and whether that new information or evidence would have resulted in a different original decision had it been taken into account.

In determining the objection, the objection officer may seek or rely upon advice within the ATO, including from the Tax Counsel Network (in compliance with Law Administration Practice Statement PS LA 2012/1 *Engagement of Tax Counsel Network on high risk technical issues*) and any internal advisory panel or panels with external membership, such as the General Anti-Avoidance Rules Panel. In relation to external advice, the objection officer may rely on existing advice or seek new advice.

The objection officer should advise the taxpayer of the general nature of any discussions with the original decision-makers, unless the circumstances of the matter are such that it is inappropriate to do so.

In considering opportunities for early and alternative dispute resolution (including initiating settlement discussions or the use of alternative dispute resolution or considering any taxpayer proposals for earlier resolution), it would be appropriate to consider whether the original decision-maker should also be involved in the resolution process.

## 5. What are the responsibilities of an officer involved in the original decision-making process?

The original decision-maker and other officers who have had substantive involvement in the original decision-making process will:

- engage as necessary with the objection officer, but not attempt to influence the objection decision
- ensure the relevant case records are up-to-date and complete, and if there is any other relevant documentation or evidence supporting the original decision, provide it to the objection officer
- discuss the basis and context of the original decision when required to do so by the objection officer
- ensure that information provided to the objection officer is fair, objective and supported by evidence and is complete, and
- make themselves available to the objection officer but not otherwise contact the objection officer.

## 6. What are the circumstances where we modify our approach to the communication protocols?

Limited circumstances that justify a modified approach to the communication protocols between objection officers and officers involved in making the original decision include:

- where the objection is not in relation to an earlier ATO decision (a 'self-objection') – as there has been no original decision, this Practice Statement does not apply
- if, on receipt of a notice issued under section 14ZYA of the *Taxation Administration Act 1953* (and given the complexity of the case and the timeframes required), involvement of original decision-makers is considered necessary to reach a decision within the timeframe of the notice
- if the taxpayer requests continued involvement of original decision-makers – for instance, to expedite objection decision-making, and
- when a new audit is commenced in respect of the taxpayer's later years, on the same issue and arrangement that is the subject of the objection – additional collaboration between objection officers and those involved in the new audit may be appropriate.

If the objection officer considers that another variation from the approach in this Practice Statement is appropriate, approval must be sought from an Objections and Review SES officer.

## 7. More information

For more information, see:

- [Object to an ATO decision](#)
- [Our commitment to you in resolving your dispute](#)
- [PS LA 2012/1 Engagement of Tax Counsel Network on high risk technical issues](#)

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## References

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| <b>Legislative references</b>      | TAA 1953 14ZYA |
| <b>Related Practice Statements</b> | PS LA 2012/1   |

## ATO references

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