PS LA 2012/1 - Management of high risk technical issues and engagement of officers in the Tax Counsel Network

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This document has changed over time. This version was published on *11 October 2013*

Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2012/1

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.

SUBJECT: **Management of high risk technical issues and engagement of officers in the Tax Counsel Network**

PURPOSE: **To outline the principles guiding the management of high risk technical issues, including the engagement of the Tax Counsel Network on those issues**

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STATEMENT

1. This practice statement sets out the guiding principles behind the management of high risk[1] technical issues and the appropriate level of engagement of officers in the Tax Counsel Network on those issues.

Guiding principles

2. A group of high level tax technical experts are located within the Tax Counsel Network 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.[2]

[1] 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.

[2] As outlined in Corporate Management Practice Statement PS CM 2003/02 *Risk and issues management*.

4. Correct application of the Enterprise Risk Management Framework ensures that technical issues are managed appropriately. This includes ensuring our high level technical expertise within the Tax Counsel Network 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 technical officers in the Tax Counsel Network 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 officers in the Tax Counsel Network should be engaged – by focussing risk assessment of an issue on particular criteria
   - determine the extent to which officers in the Tax Counsel Network 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 officers in the Tax Counsel Network, and the manner in which they should work together in prioritising and resolving issues are also outlined in the Guide. This will include ensuring early engagement of technical specialists from the Tax Counsel Network when appropriate to the technical decision making process.

7. There should be a joint commitment by all business lines and officers in the Tax Counsel Network 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. Three categories of work have been recognised as having a level of inherent risk sufficient to require the engagement of Tax Counsel Network officers. These categories are:

   - the application of the general anti-avoidance rules
   - strategic litigation
   - public rulings.

   Although it is mandatory that officers in the Tax Counsel Network 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. Additionally, law design work is recognised as having a level of inherent risk sufficient to support engagement of Tax Counsel Network officers. The Integrated Tax Design business line has stewardship of this work. Tax technical experts in the Integrated Tax Design business line will initially scope and assess the issues and risks associated with any law design work. The Integrated Tax Design business line will then engage the Tax Counsel Network, as appropriate.

10. Officers in the Tax Counsel Network are engaged to work on technical issues through the Work allocation, reporting and monitoring team in the Tax Counsel Network. 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.

11. This practice statement does not preclude the use of informal dialogue and direct engagement between officers in business lines and the Tax Counsel Network (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 the Tax Counsel Network, to confirm the level of risk and ongoing engagement.

Law Interpretation Forum

12. Strategic oversight will be through the Law Interpretation Forum. The Forum will focus on and shape the ATO's law interpretation practices and outcomes including:

- ensuring that a whole of ATO approach is taken in relation to addressing risks and priorities for law interpretation matters,
- ensuring that the right risks are managed at the right time,
- improving the effectiveness and timeliness of our law interpretation work,
- making connections between law interpretation and the implications for policy, dispute resolution and litigation, and
- providing direction on building the law interpretation capability across the ATO.

Amendment history

Date of amendment	Part	Comment
11 October 2013	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.
3 September 2012	Paragraphs 9 and 10, Other references	Updated name of Work allocation, 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 **Guide to managing high risk technical issues** **How to engage Tax Counsel Network (TCN) – technical engagement process**
File references	1-3PWASXG/1-4VOFOAP
Date issued	10 April 2012
Date of effect	10 April 2012
Other Business Lines consulted	All