

PwCA: Review of Design and Operational Effectiveness of Multi- Disciplinary Partnership Protocol

September 2025

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Glossary

AC	Assistant Commissioner
ACCC	Australian Competition and Consumer Commission
ALP	Authorised Legal Practitioner
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CEO	Chief Executive Officer
DC	Deputy Commissioner
ECR	Engagement Compliance Review
EL	Engagement Letter
FY	Financial year
GQMS	Global Quality Management System
ILP	Independent Legal Practitioner
LoS	Line of Service
LPP	Legal Professional Privilege
MAAL	Multinational Anti-Avoidance Law
MDP	Multi-Disciplinary Partnership
MLT	Management leadership team
MNC	Multinational Corporations
NLP	Non-legal Practitioner
NLPP	Non-legal Practitioner Partner
OGC	Office of General Counsel
PL	Practising Lawyer
PLL	Practising Lawyer List
PwCA	PwC Australia
R&Q	Risk & Quality
SoW	Statement of Work
T&L	Tax and Legal
UEL	Umbrella Engagement Letter

Background

PwC Australia (PwCA) has appointed Mr Bruce Quigley (the consultant) as an independent consultant to undertake a review of the design and operational effectiveness of the firm's Multi-Disciplinary Partnership (MDP) Protocol for Legal Services (MDP Protocol) and mandatory triage process.¹

In 2008, PwCA became an MDP which is a partnership between legal practitioners and non-legal services. As an MDP, PwCA may conduct engagements that are primarily for the purpose of providing legal advice to be delivered as legal engagements under the direction of a practising lawyer. Confidential communications for the dominant purpose of legal advice or anticipated litigation would in those matters be protected by Legal Professional Privilege (LPP).

In connection with the ATO's inquiry concerning tax structures adopted by multinational companies (MNCs) in response to the Multinational Anti-Avoidance Law (MAAL), beginning in 2016, the Australian Taxation Office (ATO) served formal requests for information and documents to PwCA (and other tax advisors) under s353-10 of Schedule 1 to the Taxation Administration Act 1953 (Cth). Those notices required production of information and documents relevant to, amongst other matters, the work that was done by PwCA for clients in response to the MAAL.

In response to the ATO's notices, PwCA withheld certain documents from production on the basis of LPP. It did so with respect to engagements that were described as being directed by legal practitioners in PwCA's engagement letters. The ATO challenged many of the LPP claims, including by issuing further s353-10 notices.

PwCA subsequently engaged in a review of the LPP claims and in the course of that review identified certain engagements that were not being directed by legal practitioners as described in the engagement letters. This conduct was contrary to PwCA's values and policies concerning both the engagements and the assertion of LPP. As a result, certain PwCA clients decided to waive their privilege claims, whilst many documents were not in fact privileged. Some of the earlier productions under the s353-10 notices had to be redone, resulting in additional documents being made available to the ATO.

PwCA undertook a number of steps, in consultation with the ATO, to enforce adherence to its MDP Protocol and supporting policies, enhance those policies, and train PwCA personnel to prevent recurrence of these issues. PwCA entered into a Deed of Settlement with the ATO in March 2023 (the Deed) which required PwCA to undertake a number of specific actions. In particular, clause 3.7 of the Deed requires that PwCA will by 30 September 2025 select and engage an independent reviewer to undertake a review of the design and

¹ Mr Quigley is a former Second Commissioner of Taxation. This is the third independent review that he has undertaken of PwCA's governance and control processes. The first was a review of the *Design Effectiveness of PwC's Tax Governance and Internal Control Framework* in 2021 with a follow up review in 2024 as required by the *Australian Tax Advisory Firm Governance, Best practice principles*.

operational effectiveness of the MDP Protocol and the mandatory triage and approval process for certain tax as legal engagements. Under clause 3.8 of the Deed, PwCA is required to provide an annual Certificate of Compliance Statement to the Commissioner by 30 September for each of the FYs 23, 24 and 25.

Terms of Reference

Objectives

The primary objectives of the review are to:

- Assess the design of PwCA's MDP Protocol and supporting policies (including the mandatory triage and approval processes for certain tax as legal engagements) for providing advice under LPP
- Evaluate the operational effectiveness of these protocols
- Identify any gaps or weaknesses in the protocols
- Provide recommendations for improvements to enhance compliance and effectiveness.

Scope of Work

The following tasks are required to be undertaken during the review:

- **Document Review:** Examine the MDP Protocol for Legal Services and the Tax as Legal Triage Escalation Framework, in addition to other relevant documentation, including guidance, procedures and training materials related to the MDP Protocol
- **Interviews:** Interview relevant partners, staff and other key stakeholders
- **Process Evaluation:** Evaluate the processes and controls in place for providing tax advice as a legal service, including the mandatory triage and escalation process.

Legal Assistance

To support the review process, an independent legal practitioner (ILP) was appointed to assist the consultant. The legal practitioner provided expert advice on matters related to LPP.

Legal Professional Privilege

The consultant and the ILP ensured that the review did not prejudice or compromise any existing or potential LPP claims by PwCA or its clients. By the review, PwCA and its clients do not intend to, and do not, waive any such LPP claims.

Review Methodology

There are two components to test and evaluate a large organisation's tax control framework that were used in the two previous independent reviews and applied again in this review.

The two components overlap and involve:

- Testing control design effectiveness
- Testing the operational effectiveness of a control.

Design Effectiveness

To test control design effectiveness the consultant performed a walkthrough of PwCA's control processes for the firm's MDP Protocol and mandatory triage process, including the following actions:

- Conducting an inquiry of appropriate personnel
- Observing PwCA's operations
- Inspecting relevant documentation and addressing the following objectives
 - understanding the flow of transactions including how those transactions are initiated, authorised, processed, recorded and treated
 - identifying the points within the process at which a potential error is likely to occur
 - identifying the controls that have been implemented to address these potential errors.

Operational Effectiveness

A combination of methods was used to determine the operational effectiveness of the firm's MDP Protocol and mandatory triage process, including the following actions:

- Participating in a live demonstration of the firm's upfront engagement and control processes
- Undertaking a walkthrough of the lifecycle of a tax as legal engagement from commencement through to review
- Examining and testing the Tax as Legal Triage Escalation Framework, triage and approval processes, including interviewing staff responsible for the processes
- Examining and testing the measures in place to ensure compliance with the MDP Protocol, escalation and triage processes, including interviewing staff who undertake the reviews
- Testing whether PwCA's processes are consistent with the ATO LPP protocols
- Completing the mandatory online training course for *Legal services in relation to tax advice*.

Document review and interviews

Numerous documents were examined as part of this review.² These included:

- Mandatory documents to be completed by partners in providing legal services in relation to tax advice
- Examples of legal engagement letters and agreements
- The MDP Protocol, escalation framework, policy documents, instructions and other guidance issued both globally and by PwCA
- System documentation
- A sample of Legal Engagement Compliance Review (ECR) records for FY 24 and FY 25
- Training decks
- The Deed of Settlement, documents to support compliance with the Deed and relevant communications between PwCA and the ATO.

Interviews/meetings were conducted with a sample of PwCA's partners and staff. This included the Tax & Legal (T&L) Leader, T&L Business Risk Partner, the Tax as Legal Escalation Partner, the Office of General Counsel (OGC) Director, Partners and Directors from the T&L Risk & Quality (R&Q) team (including the R&Q Legal team) and a selection of Tax and Private Partners who are Authorised Legal Practitioners (ALP) and/or provide or assist in Tax as Legal services. Senior ATO officers were also interviewed to get the ATO perspective.³ No clients or other stakeholders were interviewed.

The above document reviews, examination and observation, together with interview responses formed the basis for the assessment of PwCA's MDP Protocol and mandatory triage and approval process.

² Appendix I contains a list of documents made available by PwCA for this review.

³ The interview schedule is at Appendix II.

Key Findings and Observations

PwCA has made significant improvements in the design and operation of the protocols and processes in relation to tax legal services engagements since 2013.⁴

Significant events/changes include:

- A refresh of the MDP Protocol in September 2013 to, among other things, clarify and provide greater detail regarding non-legal practitioners (NLP) assisting legal practitioners in the delivery of legal services, clarify processes relating to legal conflicts, and clarify LPP considerations where legal engagements have input from non-lawyers⁵
- Reviewing the operational processes in November 2018 in the application of the MDP Protocol in relation to tax as legal services and introducing a mandatory triage and approval process for all new tax as legal service engagements
- Transitioning to a new global platform for risk acceptance controls in August 2021 and improving the processes in relation to Client and Engagement Acceptance, including the mandatory triage processes for tax as legal services
- Refreshing the MDP Protocol and *Tax as Legal Triage Escalation Framework* (Escalation Framework) in March 2023 to operationalise the judgment in *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278 and ATO feedback and directives. The new Escalation Framework mandated triage and approval by the PwCA Tax & Legal R&Q team for tax as legal engagements that met certain risk criteria.

It is considered that PwCA's MDP Protocol provides a comprehensive guide for the operational systems and protocols for the effective operation of PwCA as an MDP in the delivery of legal services. It clearly identifies the persons who are specifically authorised to provide legal services and provides detailed guidance on the role that NLPs can play in the provision of legal services. Step by step instructions are provided on the establishment process for a legal service, engagement acceptance and relationship checking and the engagement and communication with clients (including confidentiality and information barriers).

The Protocol also has a discussion of LPP and includes practical scenarios in the application of LPP. The manner in which PwCA has claimed LPP has been the subject of considerable friction and disputes with the ATO in the past. The ATO considers that there is evidence to demonstrate that there has been actual misuse and abuse of legal engagements and numerous 'baseless privilege claims'. There has also been a perception, not only within the ATO, but the wider community (including some politicians) that PwCA (and other large consulting firms) inappropriately use LPP to avoid regulators. The PwCA Management Leadership Team (MLT) is well aware of these perceptions and is taking action to address

⁴ A table of events is at Appendix III.

⁵ An assessment of the degree of compliance/non-compliance with this 2013 refreshed protocol is outside the scope of this review.

the concerns as part of PwCA's response to the findings and recommendations in the Switkowski Review.⁶

The original process document for responding to formal ATO notices issued to PwCA in relation to legal client engagements and the claiming of LPP (referred to as the *typical process* document) was not in any formal format, was out of date and wasn't as clear as it could be on the responsibilities of the various participants in the process. A more formal protocol for responding to regulatory notices was developed following observations made by the consultant during the review. A detailed process for PwCA's response to s353-10 Notices was also developed to supplement this overarching protocol. In combination, these two documents address the concerns raised by the consultant in relation to the original *typical process* document.

The MDP Protocol is supported by a *Tax as legal triage escalation framework* (Escalation Framework) that applies to engagements undertaken by tax teams that are provided as legal services. Legal service engagements which fall within certain criteria require triage and approval from the Legal R&Q team (see below). It is considered that the circumstances requiring escalation under the Escalation Framework are appropriate and address ATO concerns. Should other risks be identified either by PwCA or the ATO they can be added later.

Further support is provided by the training course *Legal Services in relation to tax advice*. This is an annual mandatory online course linked to PwCA's performance incentive program for all partners and teams across the Tax and Legal business line. The refreshed version of this annual training program for FY25 was rolled out during this review.

In the consultant's opinion, the MDP Protocol and Escalation Framework are operating effectively. There are checks and balances within the system to mitigate the risk of non-compliance with the Protocol and/or the Escalation Framework. The Legal R&Q team, which is staffed with qualified lawyers with a deep understanding of the MDP Protocol, plays a pivotal role in supporting engagement teams and enforcing the systems and procedures in the Protocol. Importantly, the Legal R&Q team undertake an annual program of Engagement Compliance Reviews (ECR) in accordance with the requirements of PwC's Global Quality Management System (GQMS).

⁶ Dr Z E Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023.

Evidence to support conclusions

MDP Protocol for Legal Services

As an MDP, PwCA must ensure that appropriate management systems are implemented and maintained for the provision of legal services. The MDP Protocol, which was last updated in September 2024, sets out the operational systems, processes and protocols for the effective operation of PwCA (as an MDP) in the delivery of legal services.

The Protocol covers the procedures that must be followed from the initial opening of a legal engagement job through to file maintenance.

Not all persons who are Authorised Legal Practitioners (ALP) in their relevant jurisdiction are permitted to provide legal services. Only Practising Lawyers (PL) who have been specifically authorised by the firm to provide legal services are able to do so. A list, known as the Practising Lawyers List (PLL), of those persons is maintained in the R&Q Legal team.⁷ A PL partner is required to be the lead engagement partner in providing legal services to a client. A PL is not permitted to perform an engagement to provide legal services if they do not possess sufficient relevant professional expertise to form their own view about the subject matter (with support from a relevant technical expert if necessary).

Whilst the same systems (a tailored risk module based on the *Salesforce* platform and *iPower*) are used for the establishment of a legal engagement as for non-legal engagements, the MDP Protocol requires that the provision of legal services by an authorised person must be recorded using specific legal services job and product codes.

Controls are in place in relation to legal engagement agreements/letters. The approved engagement agreement/letter templates were made available for examination by the consultant. These are the only templates that may be used in relation to the provision of legal services to clients unless the R&Q Legal team approves a variation.

In June 2022 the ATO published its *LPP Protocols*⁸ to assist taxpayers and their advisors when making LPP claims in response to requests for information. In response to feedback from the ATO, the PwCA Protocol was amended in March 2023 to require PLs engaged to provide tax as legal services to make reference to the *ATO LPP Protocol* in all engagement letters.

⁷ A separate list of ALPs who are not authorised to provide legal services is also maintained by the R&Q Legal team. The MDP Protocol requires that they provide an undertaking that they will not practise as a lawyer or hold themselves out as practising lawyers while at PwCA.

⁸ *Compliance with formal notices – claiming legal professional privilege in response to formal notices*, ATO, June 2022.

A PL may involve NLPs in the provision of legal services in several ways. The MDP Protocol identifies three main scenarios:

1. the NLP providing assistance to the PL in providing their opinions to a client, by undertaking such tasks as gathering information, conducting primary research and preparing draft deliverables under the supervision of the PL
2. an NLP who is a subject matter expert providing drafting or information for the purposes of the legal services, where the services are not capable of being legal services (for example, specialist accounting or valuation work)
3. an NLP who is a subject matter expert (same expertise) providing opinions or information for the purposes of the legal services, where the services are capable of also being provided as legal services (for example, stamp duty or transfer pricing work).

The MDP Protocol stresses the importance of advising the client of the role of the NLPs and clearly identifying legal services from non-legal services. Where separate legal and non-legal services are being provided under a single engagement letter, the non-legal services must be recorded on non-legal job and product codes. The templates viewed during this review ensure that the legal services to be provided under the engagement are clearly articulated.

The MDP Protocol recognises that because PwCA is an MDP and does not only provide legal services, that this creates additional risks that are less often faced by lawyers working within traditional law firms. This may be where engagement teams are assisting different clients in relation to unrelated matters or transactions. Measures to mitigate these types of risks are outlined in the MDP Protocol. As an example, PLs are prohibited from having any 'branding' indicating their status as a lawyer on any correspondence unless they are providing legal services.

The risk management and relationship checking system that applies across PwCA is a tailored risk module based on the Salesforce platform. The consultant was provided with a demonstration of the end-to-end system as it applies to legal services. This assisted in finding that the MDP Protocol is operating effectively.

All legal services engagements must be the subject of engagement acceptance processes, including relationship checking. There are prompts within the system requiring consultation and/or escalation/approval with the R&Q Legal team to ensure all necessary checks, protocols and procedures are completed.

Strict confidentiality and information barriers are mandated in the MDP Protocol to preserve client confidentiality. All files (including electronic) must be marked 'confidential' and access restricted to engagement team members only. 'M-files' is T&L's document management system. All documentation relating to Legal Team and Tax Controversy and Dispute Resolution Team legal services engagements are required to be filed in a separate 'Legal Vault' in M-Files. They are only accessible by relevant PLs and any non-legal partners and staff who are part of the legal services engagement team and have been provided security access. Where tax as legal engagements are undertaken by other PL Partners they

are saved in the 'Tax Vault'. There are controls in place to ensure that documents for these engagements have security controls equivalent to the 'Legal Vault'.

Clause 3.2 of the Deed requires PwCA to annually confirm (up until FY 25) the operation of the MDP Protocol to the delivery of tax advice as a legal service, including the process of making LPP claims to the Commissioner. In March 2023 the Deputy Commissioner (DC) Public Groups noted that the changes made to the Protocol more accurately reflected the principles in the Deed. In addition, the senior ATO officers who were interviewed for this review reported that there had been a reduction in LPP disputes recently which may be an indication that there may have been improvements in the way PwCA claimed LPP.

Legal professional privilege

There is a large section of the MDP Protocol dealing with LPP. There is recognition that the involvement of NLPPs as is common in the context of an MDP, is a potential source of complexity and that taxation advice also poses particular complexities because such advice can be given by a lawyer or by a tax agent who is not a lawyer.

There is extensive guidance in relation to scenarios where NLPPs provide assistance in the PL providing their opinions to a client, where the PL seeks non-taxation based expertise (such as in valuation or accounting) from an NLPP, or where a tax advisory PL seeks input from an NLPP in an area of the law in which the PL is not competent to advise without such input (which cannot be provided as a legal service).

The MDP Protocol emphasises that in all scenarios where LPP is to be claimed, it must be able to be demonstrated that the work done is for the dominant purpose of the PL providing legal advice to their client. The MDP Protocol requires the following practices to be followed where NLPPs are involved in the same expertise scenario:

- A PL must both in substance and in form, turn their mind to, and form their own independent view, applying their own legal skill to consider the proper application of the law to the facts, so that any legal advice (whether oral or written) is appropriate and correct
- The PL must have been instructed by the client and be able to demonstrate that they have turned their mind to the legal issues, have the relevant expertise to provide the advice and actually provide the advice by settling and approving it
- PLs must never “rubber stamp” advices prepared by NLPPs and must be able to evidence their involvement throughout the legal services engagement and that the opinions in the advice are their own, having applied their own legal skill and turned their mind independently to form their own view about the law to the facts
- Lines of communication must be consistent with the advice all being given by the PL.

The process for responding to ATO notices issued to PwCA in relation to legal client engagements and the claiming of LPP is managed by OGC who sets up an internal working team and engages a preferred law firm to provide support in relation to notice compliance. PwCA relies on the Quality Assurance (QA) processes of the external law firms however there have been issues around the quality of the work undertaken in the past leading to

friction and disputes between PwCA and the ATO. The preferred law firms now used by PwCA were selected by PwCA based on the legal firms' detailed skills/capability in such matters, understanding of PwCA processes, track record, their manner of engagement with all parties and capacity to process large volumes of documents. Notwithstanding this rigorous selection process, it is considered that a formal QA program should be developed by PwCA to provide PwCA and the ATO with some assurance of the quality of the work being performed by the external legal firms.

The typical process document

The consultant expressed some concerns with the original process document for responding to formal ATO notices issued to PwCA in relation to legal client engagements and the claiming of LPP (referred to as the *typical process* document). The document was not in any formal format, was out of date and wasn't as clear as it might be on the responsibilities of the various participants in the process. It hadn't been updated since December 2020 and was in an informal format with no PwC branding as is the case for other documents sighted during this and other reviews.

The requirement to engage with the ATO in relation to request for notice scope refinements and time extensions was several steps down in the *typical process*. The consultant's experience as a Second Commissioner of Taxation was that it was more likely that more effective and productive outcomes were achieved for both the ATO and taxpayers/advisors the earlier engagement occurred. This was true whether in relation to audits, requests for information, private ruling requests, objections, disputes or other matters.

Ideally, in the consultant's opinion, in the context of formal information requests, that engagement should occur prior to a formal notice being issued (other than in exceptional circumstances) to avoid disputes down the track.⁹ The ATO advised the consultant that it is not their practice to share draft formal notices. This is because there is almost always prior engagement with the taxpayer and/or advisor before a formal notice is issued. In most cases an informal request for information would have already been issued. Whilst they support constructive engagement with PwCA on information gathering, there is no present intention to change their policy which is that there is no *requirement* to share draft formal notices prior to their issue although they acknowledge that there may be specific instances where this may be appropriate. In the absence of agreement from the ATO to the sharing of draft notices prior to issue, the consultant recommended that PwCA considered engaging with the ATO in relation to notice scope and time extensions earlier than as envisaged in the *typical process* document.

In response to the consultant's observations and following discussion during the review, PwCA developed two documents that together address the concerns that the consultant had with the *typical process* document and go further in setting out principles to be followed by all PwCA partners and staff in responding to notices. The first, *Protocol for*

⁹ The consultant has been told anecdotally by an independent practitioner that the Australian Securities and Investments Commission (ASIC) and Australian Competition and Consumer Commission (ACCC) follow this practice whenever possible.

Responding to Regulatory Notices (the *Notice Protocol*), is a high-level document that sets out how PwCA responds to notices issued by all regulators to produce documents or information. The overall objective of the *Notice Protocol* is stated to be 'to set out a consistent and effective process for handling Notices, so as both to:

- provide timely and accurate information to (the firm's) regulators, as required by law and in line with (the firm's) commitments to being cooperative and transparent with regulators; and
- comply with the Firm's professional obligations to clients and others.'

Importantly, after stating the overall objective, the *Notice Protocol* sets out principles that all PwCA partners and staff must have regard to in responding to regulator notices. For transparency, the *Notice Protocol* should be provided to the ATO and other relevant regulators requesting feedback.

In recognition that ultimately privilege resides with the client and not PwCA, the draft *Notice Protocol* outlines PwCA's preferred approach that documents identified by PwCA or its external counsel that may be subject to a LPP claim by a client are provided to the client to obtain instructions on the claims, including any redactions over documents. If the privilege holder is not able to undertake this preferred approach, the *Notice Protocol* requires caution in identifying documents that may be subject to a claim of LPP and undertaking any LPP review on behalf of that third party. There is a dedicated team that responds to formal notices ensuring that these documented processes are followed with all productions. In addition, all productions made to regulators must be approved by a member of the MLT prior to the production being made.

The second document, *Detailed Process for PwC Australia's response to s353-10 Notices* (the *Process document*), is intended to be an internal document that sets out the process for the OGC response to notices issued by the ATO. The *Roadmap and indicative timelines* in the document provide clearer guidance than the *typical process document* on the steps to be taken in relation to s353-10 Notices, the recommended timeframes and the responsibilities of participants in the process. There is greater emphasis on early (and ongoing) engagement with the ATO (commencing in weeks 1 and 2) and the way in which documents etc may be produced for the ATO. Whilst the *Process document* is intended for internal use only, it is also recommended that the document be shared with the ATO on a confidential basis seeking feedback.

Currently, there is a guidance note to engagement teams on escalation of formal ATO notices included in the T&L R&Q SharePoint site, however the *typical process document* is not mentioned in the Protocol (or the training module). It is considered that, given the importance of correctly responding to regulator notices, that the *Notice Protocol* and *Process document* should also be referenced in the MDP Protocol and included in the next version of the training module.

It is recommended that PwCA:

- **Develop a formal QA program to provide PwCA and the ATO with some assurance of the quality of the work being performed by external legal firms**
- **Finalise the draft *Notice Protocol* and *Process documents***

- Include a reference to the *Notice Protocol* and *Process* documents in the MDP Protocol and incorporate them in the next version of the *Tax as Legal* training module
- For transparency, provide the ATO and other relevant regulators on a confidential basis with a copy of the *Notice Protocol* and the ATO with a copy of the *Process document* requesting feedback.

Tax as legal triage escalation framework

Since 2023 PwCA has taken a risk-based approach to ensuring that Engagement lead partners comply with the MDP Protocol. Engagements for the provision of tax advice as a legal service are required to be referred for triage and approval by the Legal R&Q team in accordance with the *Escalation Framework* where any of the following criteria are met:

- The establishment of a default legal services umbrella engagement letter (UEL)
- Where non-legal partners are involved in the provision of the service
- Where a foreign PwC office is involved in the process.¹⁰

Before accepting an engagement for the provision of tax as legal services, an engagement lead partner must determine whether the engagement requires triage and approval in accordance with the policy. If so, the engagement leader is required to ensure that the relevant engagement contract has been reviewed and approved by the Legal R&Q team and that the approvals and reviews are appropriately documented in the engagement file.

The following governance processes are in place to ensure that teams providing tax advice as a legal service are complying with the requirement for mandatory triage and approval for engagements that satisfy the above risk criteria:

- As part of the legal engagement acceptance process the team is required to complete a risk assessment and indicate whether the engagement satisfies the high-risk escalation criteria
- Where any of the criteria is satisfied, it is automatically flagged to the engagement team that triage and approval is required by the Legal R&Q team who receive a system notification
- The system stops the engagement team from completing the engagement risk assessment until they confirm that they have obtained approval from the Legal R&Q team
- The team is unable to open a new job code for the engagement until the engagement acceptance has been completed
- The Legal R&Q team keep an individual record for each engagement where a risk assessment has been approved in the system thus enhancing the tracking and documentation of engagements that have received triage and the matters considered as part of the triage approval process.¹¹

¹⁰ It is considered that these circumstances requiring escalation under the Escalation Framework are appropriate and address ATO concerns.

¹¹ The consultant witnessed these processes during the demonstration of the end-to-end process mentioned above.

In undertaking the triage process the Legal R&Q team evaluates whether it is appropriate for the service to be provided under a legal engagement by reviewing:

- Scope – clear scope which constitutes legal services, or where relevant, a clear delineation between legal and non-legal services
- Team and roles (including lead Legal Partner)
- Confirmation that the Lead Partner has the relevant expertise and will have the appropriate level of involvement in meetings, calls, review, sign off and responsibility of deliverables.

For FY 2024, 140 engagements were escalated to the Legal R&Q team. A 'triage tracker' is maintained by that team and records the details of each engagement including the outcome of the triage. The 2024 tracker was examined by the consultant. It included many outcomes where triage had been approved but with changes to the Engagement Letter (EL).¹² Whilst this demonstrates the value added and effectiveness of the triage process, the aim should be to reduce the number of changes that the Legal R&Q team needs to make or suggest to the ELs. This would be assisted if the Legal R&Q team prepares a list of common errors and circulates this to Engagement lead partners and engagement teams.

It is recommended that the Legal R&Q team prepares a list of the common errors made by PLs in ELs and communicates the list to Engagement lead partners and engagement teams.

Default legal services UEL

Default legal services UELs were identified as a risk requiring escalation and approval to ensure the MDP Protocol is applied correctly when they are issued.

Where a PL partner is the lead engagement partner for a client, it may be agreed with the client that a default legal services UEL will be issued under which all tax engagements led by that partner or other named PL partners will be legal services by default except for compliance services and services agreed to be provided as non-legal services. Where there are non-legal services provided by the PL, they must be clearly described in a separate Statement of Work (SoW) as services which are not provided in the capacity of a PL. If some of the services are not to be provided by a PL, those services must be clearly identified with an indication of the status or qualifications of the person or persons providing those services.

Non-legal practitioner partners

The risk of incorrectly identifying services as legal services where non-lawyers are involved in the provision of legal services under the direction of a PL is a particular focus of the ATO and has been one of the main areas of dispute with the ATO. These cases must be escalated to the Legal R&Q team for review and approval.

¹² Many of the changes were minor in nature being slight wording changes.

The *Escalation Framework* identifies two circumstances where a PL might seek subject matter expertise from an NLPP:

- Subject matter expertise (same area) – this is where subject matter expertise is provided by an NLPP where the services are capable of being the provision of legal services (for example, transfer pricing, GST or Stamp Duty). In this instance, the Legal R&Q team evaluate whether the advice is being provided in substance by the PL. If not, the Legal R&Q team will direct that the work of the subject matter expert must be provided as a non-legal service
- Subject matter expertise (other expertise) – this is where subject matter expertise from an NLPP whose services are of a kind that cannot be provided by a PL (for example, valuation or accounting work). In this instance, the Legal R&Q team evaluate whether the specialist work is directly relevant and required for the PL to provide their legal advice and whether the dominant purpose (and not an incidental purpose) of the specialist work is as an input to the legal advice. If these two criteria are not satisfied, the Legal R&Q team will direct that the work of the subject matter expert must be provided as a non-legal service.

Foreign PwC office involved in the service

An engagement for the provision of tax advice as a legal service must be referred for triage and approval by the Legal R&Q team where NLPs in a foreign PwC office are involved in the provision of the service. This is important. The ATO observed that they are seeing a lot of tax structuring involving overseas offices of the large firms and they support governance measures whenever foreign offices are involved in the provision of legal services in Australia.

The Escalation Framework requires that where PwCA is seeking specialist input from NLPPs within a foreign PwC office or network firm that the engagement must be referred to the Legal R&Q team to evaluate whether:

- The specialist overseas contribution is *directly relevant and required* for the PL to provide their Australian legal advice
- The specialist overseas contribution is for the dominant purpose (and not an incidental purpose) of the legal advice.

Where these criteria are met, the specialist contribution from the foreign office may be provided under the Australian legal engagement. Where these criteria are not met, the engagement must be delineated as a non-legal service.

Training

Legal Services in relation to tax advice is a mandatory online training module completed annually as part of the Essential IQ curriculum for all partners and staff in the Tax and Legal business line. Participants are required to complete a quiz that tests the knowledge of the content before the module is considered completed. Failure to complete the training means

the person does not meet the requirements of the *Compliance Gateway* and is not eligible to participate in the firm's performance incentive program.¹³

The focus of the module is on:

- Providing an overview and applying the tests around LPP in the context of PwCA's MDP structure and lifecycle of a legal engagement
- Issues relevant to making LPP claims and practical application of the ATO Protocol
- The PwCA Escalation Framework, including triggers requiring escalation
- Governance processes and practical issues, including the use of the approved engagement letter templates
- Key reminders when undertaking tax as legal engagements including the need for engagement letters to reference the ATO Protocol.

The consultant completed the *Legal Services in relation to tax advice* module to gain a first-hand appreciation of its content. The refreshed version of this annual training program for FY 25 was rolled out during the review.

An enhancement recommended by the consultant and included in the refreshed training was to make reference to documents identified by the ATO in its *LPP Protocol* as not usually privileged.¹⁴

It is considered that the training achieves the objectives of *understanding and applying the MDP Protocol* as required by clause 3.4.2 of the Deed.

Engagement Compliance Reviews

The Tax & Legal R&Q team undertakes an annual program of ECRs as part of PwC's GQMS. They are important elements in ensuring compliance with the firm's engagement protocols, regulatory regimes and legal requirements.

There are two elements to these reviews. There are certain globally mandated questions that are assessed as part of the overall review to test the Engagement Leader's compliance with the PwC Network Risk Management Policies. The aspects of an engagement that are examined as part of this process are: client acceptance; engagement acceptance; independence; engagement contracts; identification of high-risk engagements; engagement deliverables; review and sign-off; and engagement documentation. These matters were part of the *Effectiveness of PwC's Tax Governance and Internal Control Framework* reviews undertaken by the consultant in 2021 and 2024. The 2024 review highlighted a number of strong features of the ECR and concluded that it was a robust program although noting that further work was required to fully embed the documentation policy and desired behaviours into the business.

¹³ For both FY 24 and FY 25, there was a 100% completion rate of partners and staff who were required to complete the training.

¹⁴ Step 1.3 items (a) to (j) at paragraph 25 of *Compliance with formal notices – claiming legal professional privilege in response to formal notices*, ATO, June 2022.

In addition to these globally mandated aspects of an overall file review, the scope of a review for Tax as legal services engagements includes specific questions relevant to a legal services engagement:

- *Engagement acceptance* – Was the engagement required to undergo triage and approval by the Legal R&Q team? If so, the Legal R&Q team cross checks the engagement documents to ensure that appropriate consultation/review was undertaken as part of the engagement acceptance processes
- *Legal Informed Consent* – Assesses whether the scope of the services was in relation to a transaction, and if so whether internal approvals were obtained, and any informed consent requirements met
- *Legal Services Engagement Letter* – This requires an assessment as to whether the scope of services per the engagement documents appropriately reflects the provision of legal services, and whether the legal disclosures required under the *Legal Profession Uniform Law* have been included
- *Reference to the ATO LPP Protocol* – For engagement contracts issued after 24 March 2023 when the refreshed MDP Protocol was launched, seeks to assess whether the contract included reference to the ATO LPP Protocol
- *Compliance with policy* – This requires an assessment as to whether the engagement was compliant with the Protocol. In particular, where the engagement involves a PL working alongside an NLPP subject matter expert, can it be demonstrated that the PL partner was leading the engagement and was sufficiently involved in the delivery of legal services
- *Completion of appropriate review* – Assesses whether the engagement leader had sufficient expertise to provide the legal service.

The selection process for the Legal Reviews¹⁵ requires the Legal R&Q team to review all invoices to identify those with a legal product code. For the Tax Engagement Leaders who are PLs and undertook a Tax as Legal services engagement where a legal invoice has been issued during the relevant year, as a Tax as Legal services engagement was selected for a Legal Review. Where an Engagement Leader has not undertaken a Tax as Legal Services engagement with a legal invoice issued in the relevant period, a tax services engagement is selected for review. In addition, the Legal R&Q team conduct spot checks of the engagements with tax consulting product codes to ensure that Tax as Legal Services engagements have not been incorrectly set up as a tax services engagement.

The Legal Reviews are validated by qualified lawyers within the Legal R&Q team who have a deep understanding of the MDP Protocol and the requirements of the *Legal Profession Uniform Law*.¹⁶ For each engagement, the R&Q team assesses the engagement overall as: High Performing; Compliant; Compliant with review matters; or Non-compliant. A summary of the results for the FY 24 and FY 25 reviews with the reasons for the particular ratings are shown in the following table.

¹⁵ Clause 3.5.1 of the Deed requires that PwCA will conduct an annual file review on a sample basis of tax advice legal services engagements, such that each partner who has provided tax advice as a legal service in an income year has a minimum of one legal services tax advice file reviewed for that income year, to assess compliance with the MDP protocol and the mandatory triage and approval process set out in clause 3.3.

¹⁶ The scope for the FY 24 and FY 25 reviews was signed-off by the ATO.

Table 1: Summary of results for FY 24 and FY 25 Legal Reviews

Rating	FY 24 - Number of Partners who received this rating	FY 25 – Number of Partners who received this rating	Reasons for rating
High performing	20	19	For FY 24 and F 25, the files received this rating because all requirements and related procedures for each of the key engagement performance areas were fully complied with and best practice expectations were met.
Compliant	11	11	For FY 24 and FY 25, the minimum requirements were met for this rating.
Compliant with review matters	3	3	In FY 24 and FY25, for the File Reviews that received a rating of 'Compliant with review matters', none of the review matters raised related to non-compliance with the MDP protocols or mandatory triage and approval process.
Non-compliant	1	0	In FY 24, the file was rated 'Non-compliant' as the Engagement Letter did not include a reference to the ATO LPP Protocol as required under the MDP Protocol. In FY 25, there were no files with this rating.

Whilst the consultant did not participate in any of the reviews, he was provided with a sample of the completed FY 24 and FY 25 ECR Review Record Templates for each of the rating categories.¹⁷ It was obvious from an examination of these templates that the R&Q team undertakes a thorough review of the legal engagements, not only providing a rating for each element of the Legal Review but also providing comprehensive comments including action to be taken for improvements where relevant.

Interviews

Interviews were conducted with a sample of PwCA's partners and staff, as well as senior officers from the ATO to get the ATO perspective.

¹⁷ The templates were redacted to only remove names.

PwCA Interviews

Interviews/meetings were conducted with a sample of PwCA's partners and staff. This included the T&L Leader, the T&L Business Risk Partner, the Tax as Legal Escalation Partner, the OGC Director, Partners and Directors from the T&L R&Q team (including the R&Q Legal team) and a selection of Partners who are PLs and/or provide or assist in Tax as Legal services engagements.

The purpose of the interviews was to:

- Gain an understanding of the various policies, protocols and procedures as they relate to Tax as Legal engagements and how they have evolved over time
- Understand how those policies, protocols and procedures are implemented on the ground, particularly where NLPPs are involved in the provision of the legal services
- Gain insights from the interviewees' experiences.

The Tax as Legal Escalation Partner and the Director OGC outlined the broad structure and responsibilities of OGC as well as the role each of them plays in responding to ATO notices issued to PwCA in relation to client engagements including claiming LPP. The various R&Q team members were extremely helpful in explaining and demonstrating the processes, procedures, systems and controls in place in relation to Tax as legal engagements as well as the improvements that have been made over time.

Some common themes emerged from the interviews with the Partners who are engaged in Tax as Legal services engagements. Almost all engagements that Tax Controversy & Dispute Resolution Team partners engage in are legal service engagements with negligible input from non-legal partners.

The situation is a little more complicated for PLs who are not in the Tax Controversy & Dispute Resolution Team. They are more likely to have NLPPs involved on the broader client team, for example doing compliance and non-legal work. There was general confidence that the systems, structures and controls that are now in place ensure that the MDP Protocol and Escalation Framework are followed, for example when NLPPs are involved in assisting the PL in providing legal services or where an internal expert is engaged to provide advice to the PL. Specific mention was made of not being able to switch from non-legal to legal without commencing a new legal service engagement and the need to accurately distinguish between legal and non-legal services when NLPPs are involved in some of the work. It was suggested that may have not necessarily been the case in the past where compliance with procedures pre-dated PwCA's mandatory triage and escalation procedures and tax as legal training and therefore depended somewhat on the particular partner. There was widespread acknowledgment and appreciation of the role that the lead legal partner had to play in a legal engagement in being responsible for active involvement, overseeing the work and final approval. As one interviewee expressed it: 'it's inherent in everything I do – the engagement, filing, emails, invoices, discussions and conversations with clients.....'. Like in the 2024 review, there was a view that the strengthening and reinforcement of R&Q activities through measures such as enhanced ECRs has led to behavioural change.

In summary, interviewees were positive in believing that the MDP Protocol and mandatory triage and approval processes for Tax as legal engagements are operating effectively.

ATO Interview

A joint interview was conducted with the Deputy Commissioner (DC) and Assistant Commissioner (AC) Public Groups to get the ATO perspective.

Relationships at senior levels have improved considerably. The DC has regular productive meetings with the T&L Leader and Tax Business Risk Partner, and had a recent productive meeting with the CEO and Chief Risk & Ethics Leader that included LPP.

It was explained that there are two areas where the ATO has had concerns with PwCA in the past in relation to the provision of Tax as Legal services: Legal engagements and LPP.

Although they can't categorically say that everything is working (as 'they don't know what they don't know'), the ATO is generally comfortable with the form of the legal engagement and MDP Protocol processes noting that there is heightened risk where NLPPs are involved in the provision of legal services. They are comfortable with the Escalation Framework and approval process and didn't feel that there is the need for any further risk areas to be included for mandatory escalation at this stage. The ATO had no concerns with the Certificates of Compliance for the FY 23 and FY 24 years under the Deed.

They are not as comfortable with the position on LPP as it relates to certain documents being withheld from production under formal notices on the basis of LPP. The lower volume of disputes is a good sign of improvement however there were a couple of cases recently where the ATO has been disappointed. Some issues included a lack of responsiveness by the engagement team and waiting to the last minute to seek extensions of time to provide responses where communication could be improved. In other matters concerns continue to persist in relation to LPP claims that in some cases the ATO considered plainly incorrect (albeit these are more limited than in the past). While it is encouraging that PwCA have made improvements in their processes in relation to legal engagements, the effectiveness of the changes will be borne out over time through ATO engagements. In the consultants' opinion, this reinforces the need for PwCA senior management to continue to reinforce the cultural and risk management changes that have been developed to ensure that they are reflected at the operational level 'on the ground'.

Neither the AC nor the DC could recall seeing the procedures PwCA applies when the ATO issues formal notices and the AC commented that some PLs have claimed LPP over procedures in specific cases.

The DC explained that progress is made when issues are escalated to her and the T&L Leader. However the ATO has made its position clear and there should be enough learnings now in relation to issues that concern them that there should be earlier engagement to resolve issues without the need for such escalation. It is only once this is seen by the ATO more often that they will be able to accept that the cultural changes being driven by the

MLT is being applied more broadly. There is hope that the resolution of some long-standing legacy issues (e.g., JBS and others) may assist in achieving this.

Summary

It is considered that:

- PwCA has designed appropriate MDP Protocols (including the mandatory triage and approval processes for certain tax as legal engagements) for providing legal advice
- The MDP Protocol provides a comprehensive guide for the operational systems and protocols for the effective operation of PwCA (as an MDP) in the delivery of legal services
- The *Tax as legal triage escalation* framework supports the Protocol and the specific risks requiring escalation are appropriate
- The *Legal Services in relation to Tax advice* training satisfies the objectives of understanding and applying the MDP Protocol
- The Protocol and Escalation processes are operating effectively in practice although PwCA senior management needs to continually reinforce the cultural and risk management changes to ensure that they are reflected at the operational level
- The *Notice Protocol* document and *Process Document* developed following feedback and discussion during the review provide a consistent and effective process for responding to regulatory notices
- Implementation of the recommendations in this report will enhance the process for responding to formal notices received from the ATO and other regulators.

Appendix I

Document Listing

The following documents were provided for review as part of the PwC: Review of Design and Operational Effectiveness of Multi-Disciplinary Partnership Protocol

Document Number	Information provided	Document Name
1	Tax & Legal listing of leadership roles (from 1 July 2024)	Tax & Legal Leadership Team
2	MDP Protocol for Legal Services	Refreshed Multi-Disciplinary Partnership (MDP) Protocols - September 2024
3	Tax as Legal Triage Escalation Framework	Tax as Legal Escalation Framework
4	Legal Services Toolkit	R&Q Toolkits – Legal Services
5	Tax & Legal Risk & Quality Hub	Tax & Legal Risk & Quality Hub
6	Authorised Legal Practitioners List	Practicing Lawyers List - for viewing
7	Tax as Legal Training – FY23 Mandatory Training	FY23 Tax as Legal/complex tax training
8	Tax as Legal Training – FY24 Mandatory E-Learn	FY24 QMS Copy FINAL Essential IQ FY24 eLearn - Legal services in relation to tax advice
9	ATO Deed of Settlement	Deed of Settlement
10	FY23 Compliance Certificate	FY23 (Part 1a,1b,2 & 3) Certificate of Compliance
11	FY24 Compliance Certificate	FINAL FY24 ATO Deed Compliance Certificate with Appendices (1)
12	Legal Engagement Letter Templates	Engagement Letter - Tax as Legal Services FY23 (2)
13		Statement of Work - Tax as Legal Services FY23
14		Engagement Letter - Core Legal Services Sydney FY23
15		Statement of Work - Core Legal FY23
16		Engagement Letter - Pro Bono Legal Services FY23
17		Engagement Letter - Cross LoS - Legal and Other Services FY23
18		Engagement Letter - Cross LoS - Core Legal and Tax Agent Services FY23
19		Umbrella Engagement Letter - Default tax as legal Services
20		Umbrella Engagement Letter - Core Legal FY23
21		Umbrella Engagement Letter - FA-Feb2024
22	ATO Legal professional privilege protocol - September 2021	lpp-protocol
23	Parliamentary Joint Committee on Corporations and Financial Services Final Report	PJC Final Report
24	FY24 Tax as legal ECRs (sample files for each rating, redacted for client and personal data)	FY24 ECR High Performing example A3_Redacted
25		FY24 ECR Compliant example A3_Redacted
26		FY24 ECR Compliant with review comments A3_Redacted
27		FY24 ECR non compliant example A3_Redacted
28		FY24 ECR Hours example A3_Redacted

Document Number	Information provided	Document Name
29	Tax as Legal Triage Log (redacted for client and personal data)	FY23 -24 Tax as legal triage tracker
30	Tax as legal triage numbers	Tax as legal triage numbers (FY23 to FY24 data)
31	Conflict management policies	NRMP 19.10.000 Conflicts of interest and sensitive client situations
32		NRMP 19.10.001 Identification of potential conflicts of interest and sensitive situations
33		NRMP 19.10.002 Resolution of potential conflicts of interest and sensitive client situations
34		PwC Ethical Dividers Protocols
35	FY25 Tax as Legal Training module	FY25 Tax as Legal Training module (provided copy of training as well as live e-learn format)
36	Sample of FY24 tax as legal triage tickets (redacted for client and personal data)	PWC200986804 - default legal UEL triage Final Redacted
37		PWC200917711 - same expertise triage (non controversy) Final Redacted
38		PWC200767730 - same expertise triage (controversy) Final Redacted
39		PWC200958211 - network firm involvement - Final Redacted
40	Documentation provided to ATO regarding the reviews conducted, selection process etc.	FY23 - PwC File Reviews - Scope of Legal Reviews
41		FY23 - Engagement Compliance Review - Template Review Record
42		FY23 - Confirmation of Review Scope from ATO Final Redacted
43		FY24 - PwC File Reviews - Scope of Legal Reviews
44		FY24 - Engagement Compliance Review - Template Review Record
45		FY24 - Confirmation of Review Scope from ATO
46		FY25 - PwC File Reviews - Scope of Legal Reviews
47		FY25 - Engagement Compliance Review - Template Review Record
48		FY25 - Confirmation of Review Scope from ATO - Cover Email
49		FY25 - Confirmation of Review Scope from ATO - Letter
50	Formal notice response process outline – December 2020	20201208_ATO notice - typical production actions
51	Troublesome Practice Matters Policy	Troublesome Practice Matters Policy
52	Practising Lawyer Partners - summary Data by team	Practising Lawyer partners by team (1)
53	Timeline of events relevant to tax as legal services	Timeline of events relevant to tax as legal services
54	Section 353-10 Notices Guidance	Section 353-10 Notices Guidance
55	Protocol for responding to regulatory notices	Protocol for Responding to Regulatory Notices – July 2025
56	Process for responding to s353-10 notices	Detailed Process for PwC Australia’s Response to s353-10 Notices
57	FY25 Tax as legal ECRs (sample files for each rating, redacted for client and personal data)	FY25 ECR Compliant example – Redacted
58		FY25 ECR Compliant with Review Comments example – Redacted
59		FY25 ECR High Performing example – Redacted

Appendix II

Interview Summary

PwC Interviews	Date
T&L Leader and members of the T&L R&Q Team – Kick Off Meeting	3 December 2024
Tax as Legal Escalation Partner	3 December 2024
Legal R&Q Director	3 December 2024
T&L R&Q Team members, Independent Legal Practitioner - Kick off with Independent Legal Practitioner	16 January 2025
Tax as Legal Escalation Partner, OGC Director	13 February 2025
International Tax Partner	25 February 2025
T&L R&Q Directors - Engagement acceptance process walkthrough	25 February 2025
Tax Controversy Partner	25 February 2025
T&L R&Q Team members	15 April 2025
Tax as Legal Escalation Partner, OGC Director	17 April 2025
T&L Leader, Tax as Legal Escalation Partner, OGC Director, T&L R&Q Team Members	28 April 2025

External Interviews	Date
ATO Deputy Commissioner Public Groups and ATO Assistant Commissioner Public Groups	14 April 2025

Appendix III

Tax as legal triage timeline

Date	Event
February 2008	PwCA Partnership (PwCA) became a Multidisciplinary Partnership (MDP) and MDP Protocols first introduced
September 2013	MDP Protocols refreshed. The key changes were to: • reflect changes in the state regulatory regime(s) applicable to the provision of legal services and solicitor's rules; • clarify and provide greater detail on the circumstances in which non-legal practitioners may assist legal practitioners in the delivery of legal services or provide subject-matter expertise; • reflect systems and technology changes within PwCA; • clarify PwCA's processes relating to legal conflicts including processes related to informed consent; and • clarify legal professional privilege considerations where legal engagements have input from non-lawyers.
February 2014 to April 2016	The relevant legal engagements that were considered by the Federal Court in the <i>Commissioner of Taxation v PricewaterhouseCoopers</i> [2022] FCA 278 were entered into. In particular, these engagements were undertaken under an Umbrella Engagement Agreement dated 26 February 2014 (signed on 16 July 2014) and nine statements of work with dates ranging from 31 October 2014 to 22 April 2016.
September 2016	The ATO began to issue formal requests for information and documents to PwC under section 353-10 of Schedule 1 to the <i>Taxation Administration Act 1953</i> (Cth). These notices required production of information and documents relevant to, amongst other matters, the work that was done by PwCA for clients in response to the Multinational Anti-Avoidance Law. In response to the ATO notices, PwCA withheld certain documents from production on the basis of legal professional privilege. PwCA withheld the documents for engagements that were described as being directed by legal practitioners in PwCA engagement letters, which would have permitted clients to claim LPP over their communications.
July 2018	The ATO began to challenge the legal professional privilege claims by issuing further 353-10 notices.

Various	PwCA engaged in a review of the legal professional privilege claims and identified certain engagements that were not being directed by legal practitioners as described in the engagement letters. As a result, certain PwC clients decided to waive their privilege claims and some of the earlier productions under the s353-10 notices had to be redone, resulting in additional documents being made available to the ATO.
November 2018	PwCA undertook a review of its operational processes in relation to the application of the MDP Protocol in relation to tax as legal services. To support the application of the MDP Protocols, a mandatory triage and approval process was implemented for all new tax as legal service engagements. The process required that prior to the creation of any new legal services engagement for the provision of tax advice, the legal partner was responsible for ensuring that the engagement was triaged and approved by R&Q or OGC. The implementation was announced in November 2018. The announcement: • included a reminder that it was critical the MDP Protocols were diligently applied in the establishment and conduct of all legal service engagements; • set out key requirements that were required to be observed in relation to all legal service engagements; and • referenced the public statements made by the ATO expressing significant frustration with legal professional privilege and indicating an intention to challenge positions through the courts.
March to May 2019	Mandatory <i>Tax as a Legal Service</i> training run for all tax partners and staff within Financial Advisory Line of Service (LoS) including Private Clients (now the Tax & Legal LoS and PwCA Private Tax)
May 2020	Mandatory <i>Tax as a Legal Service</i> Training run for all tax partners and staff within Financial Advisory LoS including Private Clients (now Tax & Legal LoS and PwC Private Tax)
May 2020 to November 2021	From May 2020 the ATO issued position papers to PwCA on the application of Div 284 to LPP claims made by PwC in response to the 353-10 Notices. PwCA provided responses to each of these position papers during the period June 2020 to November 2021.
June 2020	Application filed by Commissioner in the Federal Court in relation to <i>Commissioner of Taxation v PricewaterhouseCoopers & Ors</i> VID 364 of 2020

June 2021	Mandatory <i>Tax as a Legal Service</i> training run for all tax partners and staff within Financial Advisory LoS including Private Clients (now Tax & Legal LoS and PwC Private Tax)
August 2021	Transitioned to a new global platform for risk acceptance controls, in Salesforce. The Salesforce system replaced the Risk module of iPower and improved the processes in relation to Client and Engagement Acceptances, including the mandatory triage processes for tax as legal services.
March 2022	Judgement handed down by Moshinsky J in <i>Commissioner of Taxation v PricewaterhouseCoopers</i> [2022] FCA 278
June 2022	ATO published its LPP Protocols
March 2023	ATO Deed of Settlement executed between PwCA and the ATO.
March 2023	Refreshed MDP Protocols and Tax as Legal Escalation Framework launched to the Financial Advisory practice (now Tax and Legal). The updates operationalised the judgement in <i>Commissioner of Taxation v PricewaterhouseCoopers</i> [2022] FCA 278 and ATO feedback and directives. The key changes included: • clarifying the circumstances in which non-legal practitioners may assist legal practitioners in the delivery of legal services or provide subject-matter expertise; • clarifying the circumstances in which legal engagements may be managed when PwCA engages with overseas offices; • requirement for all tax as legal engagement letters to make reference to the ATO LPP Protocol; • inclusion of references to the Uniform Law in line with the introduction of this legislation; and • amendments to reflect technology changes within PwCA. The new Tax as Legal Escalation Framework mandated triage and approval by the PwCA Tax & Legal R&Q team for tax as legal engagements that met the criteria in the framework only. The change from mandating triage and approval for all tax as legal engagements to a risk-based approach was made in consultation with the/with the awareness of the ATO.
March and June 2023	Training undertaken by tax practitioners on the refreshed MDP Protocols and Tax as Legal Escalation Framework

February and March 2024	Mandatory <i>Tax as a Legal Service</i> training run for all tax partners and staff within Financial Advisory LoS including Private Clients (now Tax & Legal LoS and PwC Private Tax) Training undertaken as part of the Essential IQ process and formed part of the Compliance Gateway.
July 2024	Minor update made to MDP Protocols to: • Remove the section relating to legally privileged tax services; and • reference the new lines of service (ie. Tax & Legal instead of Financial Advisory).
March and April 2025	Mandatory <i>Tax as a Legal Service</i> training run for all tax partners and staff within Tax & Legal LoS and PwCA Private Tax. Training undertaken as part of the Essential IQ process and formed part of the Compliance Gateway.