



# ***PS LA 2004/10 - Tax laws claimed to be invalid***

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 This practice statement was originally published on 6 September 2004. Versions published from 8 January 2009 are available electronically - refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be requested by emailing [TCNLawPublishingandPolicy@ato.gov.au](mailto:TCNLawPublishingandPolicy@ato.gov.au) .



# Practice Statement Law Administration

**PS LA 2004/10**

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**FOI status: may be released**

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*This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences. Where this occurs Tax Office staff must follow their Business Line's escalation process.*

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**SUBJECT:** Tax laws claimed to be invalid

**PURPOSE:** How to deal with correspondence from taxpayers who claim that they will not comply with the tax laws because:

- the laws are invalid, or
- the laws do not apply to them.

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## BACKGROUND

1. The Tax Office regularly receives correspondence from taxpayers arguing they are exempt from fulfilling their taxation obligations because:
  - either the entire taxation system is invalid, or
  - the tax system does not apply to them for a particular reason.
2. The correspondence may take a variety of forms, including requests for proof that laws are valid, requests for information, personal enquiries and objection letters.
3. This type of correspondence will often include:
  - Complex constitutional arguments based on the notion that Australia's entire legal and political systems are invalid, thus all laws are invalid
  - arguments that the particular individual's legal status is such that they are not subject to Australian laws
  - form letters and documents. Often several letters are received bringing up identical arguments. Frequently these letters are documents purporting to be legal notices, which do not appear to be valid. Such

documents may demand that Tax Office staff to produce documents, recognise a particular fact, make payments or perform other tasks.

4. On occasion, these letters will threaten legal action against the Tax Office, or against particular officers.

## STATEMENT

5. Any correspondence of this type which is not part of an on-going matter, or where there is any doubt about the validity of the taxpayers' arguments, should be escalated in accordance with the published procedures Correspondence – action constitutional changes.
6. If officers suspect that the author of the documents has commenced or is attempting to commence legal action, details should immediately be forwarded to Strategic Recovery in accordance with the published procedures Correspondence – action constitutional changes. Strategic Recovery will then liaise with the Legal Services Branch if required.
7. In accordance with the Attorney General's *Legal Services Directions*, the Tax Office may provide legal assistance to defend a staff member who has acted reasonably and responsibly in carrying out their duties from a claim brought by a person and based on one of these unsupportable arguments.
8. It is important for staff to note the following.
  - It is not the function of officers to enter into debate or give advice about Constitutional issues or other issues not related to the administration of the taxation system□.
  - Submissions raising arguments similar to the types raised in correspondence of this type have already been dismissed as being unarguable by various courts including the High Court of Australia.
  - The correspondences, and any responses, do not alter any obligations the authors may have under the laws administered by the Commissioner, and refusal to comply with these obligations may result in prosecution and the imposition of penalties and interest.
9. Given that many claims of this type have been rejected by the Courts, it is not appropriate for Tax Office staff to spend time and resources producing detailed responses to these claims.
10. When officers are responding to correspondence of this type, generally, the appropriate response will be a short letter of rejection. This letter will make it clear that the Tax Office does not accept the views put forward by the author and that the correspondence does not alter any legal obligations the author has under any of the laws administered by the Commissioner.
11. This practice statement replaces Law Administration Practice Statement PS LA 1999/3 which is withdrawn from the date of effect of this practice statement.

## Amendment history

| Date of amendment | Part                  | Comment  |
|-------------------|-----------------------|--|
| 21 October 2009   | Preamble              | Updated to reflect current wording                       |
|                   | Paragraph 5 & 6       | Replace referral point with linked escalation procedures |
|                   | Original paragraph 11 | Deleted as it is no longer required                      |
| 8 January 2009    | Paragraph 11          | Alternate contact updated                                |
| 5 March 2006      | Paragraph 11          | Referral points updated                                  |
| 15 November 2004  | Paragraphs 5 and 11   | Referral points updated                                  |

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|-----------------------------|--|
| Subject references          | constitution<br>invalid law<br>taxation laws   |
| Related practice statements | Law Administration Practice Statement PS LA 1999/3 (withdrawn)   |
| File references             | NO 99/6282-4; NO 98/11481-6; 1-1R67S0X   |
| Date issued                 | 6 September 2004   |
| Date of effect              | 6 September 2004   |
| Contact email               | <a href="mailto:OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au">OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au</a> |
| Section                     | Operational Policy, Assurance and Law  |