

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

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! This document has changed over time. This version was published on *19 October 2012*

! 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 .



Practice Statement Law Administration

PS LA 2004/10

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This law administration 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](#). ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

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 ATO 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 ATO personnel produce documents, recognise a particular fact, make payments or perform other tasks.
4. On occasion, these letters will threaten legal action against the ATO, or against particular ATO personnel.

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 correspondence*.
6. In accordance with the Attorney General's *Legal Services Directions*, the ATO may provide legal assistance to defend ATO personnel who have acted reasonably and responsibly in carrying out their duties from a claim brought by a person and based on one of these unsupportable arguments.
7. It is important for ATO personnel to note the following.
 - It is not the function of ATO personnel 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.
8. Given that many claims of this type have been rejected by the Courts, it is not appropriate for ATO personnel to spend time and resources producing detailed responses to these claims.
9. When ATO personnel 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 ATO 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.
10. 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
19 October 2012	Paragraph 5	Corrected 'changes' to 'correspondence'.
5 January 2012	Original paragraph 6	Deleted as it is no longer current
	Paragraphs 3 and 6	Minor grammatical corrections
9 November 2010	Contact details & general style update	Updated contact officer & changed reference to Tax Office to ATO.
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

References

Subject references	constitution invalid law taxation laws
Related practice statements	PS LA 1999/3 (withdrawn)
Other references	Correspondence - action constitutional correspondence
File references	NO 99/6282-4; NO 98/11481-6; 1-1R67S0X
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Contact email	OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au
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