

# ***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 *3 October 2024*

! 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) .



This Practice Statement provides guidance on how to deal with correspondence from taxpayers who claim that they will not comply with tax laws because the laws are invalid or do not apply to them.

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

### 1. What this Practice Statement is about

Australia's taxation and superannuation systems are a community asset and we all have a role to play in maintaining them. By complying with your tax obligations, you join millions of Australians who do their part to support the Australian community.

We occasionally receive correspondence from taxpayers arguing they are exempt from fulfilling their taxation obligations because:

- the entire taxation system is invalid, or
- the tax system does not apply to them for a particular reason.

The correspondence may take a variety of forms, including requests for proof that laws are valid, requests for information, personal enquiries and objection letters.

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, or
- replicated letters and documents, often erroneously purporting to be legal notices, which may demand that ATO staff produce documents, recognise a particular fact, make payments or perform other tasks.

These letters may threaten legal action against the ATO or specified officers.

This Practice Statement provides guidance on how we will treat such correspondence.

### 2. Taxation law and the ATO

The operation of the Australian taxation system is established by statute, as follows:

- the Australian Constitution establishes the Commonwealth of Australia<sup>1</sup> and empowers its Parliament to enact laws in respect of taxation<sup>2</sup>
- the ATO is a statutory agency of the Commonwealth of Australia, established to assist the Commissioner of Taxation, who is the head of that statutory agency<sup>3</sup>
- the Commissioner administers the *Taxation Administration Act 1953* (TAA)<sup>4</sup> and is legally entitled to institute, and appear in, legal proceedings in their official name<sup>5</sup>
- the TAA and other taxation laws are valid<sup>6</sup> and apply to the entirety of the land mass of Australia, as well as its coastal seas and external territories<sup>7</sup>; a person within these geographic boundaries cannot exempt themselves from taxation laws<sup>8</sup>
- the Commissioner is required by law to make assessments of the taxable income and tax payable by taxpayers<sup>9</sup>, and

<sup>1</sup> Covering clause 3 of the *Commonwealth of Australia Constitution Act 1901* (the Constitution). Covering clause 5 provides that the Constitution and all laws made by Parliament are binding on the people of every State and part of the Commonwealth of Australia.

<sup>2</sup> Subsection 51(ii) of the Constitution in Part V of the Constitution.

<sup>3</sup> Section 4A of the *Taxation Administration Act 1953* (TAA) and section 7 of the *Public Service Act 1999*. Note that the ATO does not have (or need) legal personality to sue under that name – this is given to the Commissioner and Deputy Commissioners instead; see also *Moeliker v Chapman* [2000] HCATrans 242 and *Dooney v Henry* [2000] HCA 44 at [7].

<sup>4</sup> Section 3A of the TAA; the Commissioner may also delegate their duties to Deputy Commissioners and other ATO officers per section 8 of the TAA; *O'Reilly v Commissioners of State Bank of Victoria* [1983] HCA 47.

<sup>5</sup> Section 15 of the TAA and section 255-5 of Schedule 1 to the TAA.

<sup>6</sup> *Josse v Australian Securities and Investment Commissioner* [1998] HCA 77 at [20].

<sup>7</sup> Section 960-505 of the *Income Tax Assessment Act 1997*, subsection 2(1) of the TAA and covering clause 6 of the Constitution.

<sup>8</sup> *Lamont v Deputy Commissioner of Taxation* [2019] NSWCA 221 (*Lamont*) at [9].

<sup>9</sup> Section 166 of the *Income Tax Assessment Act 1936*.

- taxation liabilities must be paid in Australian currency.<sup>10</sup>

### 3. Our response to correspondence claiming tax laws are invalid or do not apply

We will not respond to correspondence where taxpayers claim tax laws are invalid or do not apply. Given that many claims of this type have been rejected by the Courts, we do not consider it an appropriate use of ATO resources to do so.

Any correspondence of this type which is not part of an ongoing matter should be filed in accordance with the published [Constitutional correspondence](#) procedures (link available internally only).

In accordance with the Attorney-General Department's Legal Services Directions 2017, the ATO may provide legal assistance to defend ATO staff 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.

It is important for ATO staff to note the following:

- It is not the function of ATO staff to enter into debate or give advice about Constitutional or other issues not related to the administration of the taxation system.

- Submissions raising arguments of this type have already been dismissed as being unarguable by various courts, including the High Court of Australia.<sup>11</sup>
- 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.

Taxpayers may wish to seek the advice of an appropriately registered taxation professional or a legal practitioner prior to taking legal action. The Courts have often found raising these types of arguments to be an abuse of process and have imposed punitive costs orders on litigants who raise them.

### 4. More information

For more information, see:

- [ATO Charter](#)
- the Constitution
- TAA

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<sup>10</sup> Section 21 of the *Taxation Administration Regulations 2017* and *Lamont* at [10].

<sup>11</sup> For example, see *Deputy Commissioner of Taxation v Levick* [1999] FCA 1580, *Moeliker v Chapman* [2000]

HCA Trans 242, *Dooney v Henry* [2000] HCA 44 at [7] and *Lamont* at [10].

## Amendment history

### 3 October 2024

| Part       | Comment   |
|------------|---|
| Section 3  | Updated to inform change in business processes (ATO staff will not be responding to correspondence where taxpayers claim tax laws are invalid or do not apply). |
| Throughout | Updates to citation references.<br>Updated in line with current ATO style and accessibility requirements.   |

### 11 August 2022

| Part        | Comment   |
|-------------|---|
| Paragraph 2 | New paragraph 2 added, along with form amendments to the remaining paragraphs and addition of further references. |
| Throughout  | Updated to current LAPS format and style.   |

### 19 October 2012

| Part                 | Comment                                  |
|----------------------|--|
| Paragraph 5          | Corrected 'changes' to 'correspondence'. |
| Original paragraph 6 | Deleted as it is no longer current       |
| Paragraphs 3 and 6   | Minor grammatical corrections            |

### 9 November 2010

| Part                                   | Comment   |
|--|---|
| Contact details & general style update | Updated contact officer & changed reference to Tax Office to ATO. |

### 21 October 2009

| Part                  | Comment  |
|-----------------------|--|
| 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

| Part         | Comment                   |
|--------------|---------------------------|
| Paragraph 11 | Alternate contact updated |

### 5 March 2006

| Part         | Comment                 |
|--------------|-------------------------|
| Paragraph 11 | Referral points updated |

### 15 November 2004

| Part                | Comment                 |
|---------------------|-------------------------|
| Paragraphs 5 and 11 | Referral points updated |

## References

|                               |   |
|-------------------------------|---|
| <b>Legislative references</b> | TAA 1953 2(1)<br>TAA 1953 3A<br>TAA 1953 4A<br>TAA 1953 8<br>TAA 1953 15<br>TAA 1953 Sch 1 255-5<br>ITAA 1936 166<br>ITAA 1997 960-505<br>Taxation Administration Regulations 2017 21<br>Commonwealth of Australia Constitution Act 1901 covering clause 3<br>Commonwealth of Australia Constitution Act 1901 covering clause 5<br>Commonwealth of Australia Constitution Act 1901 covering clause 6<br>Commonwealth of Australia Constitution Act 1901 51(ii)<br>Public Service Act 1999 7 |
| <b>Case references</b>        | Deputy Commissioner of Taxation v Levick [1999] FCA 1580; 43 ATR 621; 168 ALR 383<br>Dooney v Henry [2000] HCA 44; 45 ATR 113; 174 ALR 41; 74 ALJR 1289<br>Joosse v Australian Securities and Investment Commissioner [1998] HCA 77; 159 ALR 260; 73 ALJR 232<br>Lamont v Deputy Commissioner of Taxation [2019] NSWCA 221<br>Moeliker v Chapman [2000] HCATrans 242<br>O'Reilly v Commissioners of State Bank of Victoria [1983] HCA 47; 153 CLR 1; 82 ATC 4671; 13 ATR 706; 44 ALR 27     |
| <b>Other references</b>       | <a href="#">ATO Charter</a><br><a href="#">Legal Services Directions 2017</a>   |

## ATO references

|                        |                                  |
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