PS LA 2004/6 - Giving advice on proposed changes to the tax law before royal assent or registration on the Federal Register of Legislation

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Australian Government
Australian Taxation Office

PS LA 2004/6

Giving advice on proposed changes to the tax law before royal assent or registration on the Federal Register of Legislation

This practice statement sets out the principles for dealing with external enquiries about proposed changes to tax laws or regulations.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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1. What this practice statement is about

Proposed changes to the tax law may generate requests for information or advice from taxpayers. This practice statement sets out what advice or guidance you can provide to taxpayers where:

- proposed changes to the tax law have been publicly announced
- announced changes will or may apply before the proposed law or regulation has received royal assent or is registered on the Federal Register of Legislation
- there are proposed changes to the tax law that have not been publicly announced.

2. General principles for dealing with enquiries on proposed law changes

Proposed laws and regulations may change before royal assent or registration on the Federal Register of Legislation. After the government announces its intention to change the law, the outcome anticipated may change as a result of community consultation. Additionally, draft legislation can be amended by the Parliament. Our approach is to avoid giving advice or guidance that may mislead a taxpayer. The general principles to follow are:

- Do not give indicative interpretative advice on legislation before its royal assent, or on regulations before their registration on the Federal Register of Legislation (see also section 4 on delaying advice).
- Give advice on existing law as it stands, even if it will be affected by the announced measures. You should qualify your advice to note that there is the prospect of a law change which, if enacted, may affect the advice. Refer only to the source document that announced the proposed law change, and adhere to its wording (see also section 4 on delaying advice).
- *Never* mention or discuss proposed changes to the law that have not been publicly announced.
- Assist taxpayers with their enquires by quoting or providing publicly-released materials and information, such as:
  - media releases
  - draft legislation
  - draft explanatory memoranda.
- Use scripts or other approved materials prepared for the measure.
- If you are uncertain about what the approved materials are, contact your business line's new measures relationship manager (see 'more information' at section 7 for a link).

The following paragraphs set out more detailed instructions for specific circumstances.

Also see the table in Attachment A for a summary of how to respond to enquiries at each stage of law design.

3. The taxpayer raises issues or concerns with an announced proposal for law change

A taxpayer may raise significant concerns or issues on such matters as:

- the policy intention of the proposed law
- interpretative issues
- unintended consequences
- risks to the revenue
- the timing of implementation
- effect on compliance costs
- areas of uncertainty in the law.

Try to get a clear understanding of their concerns, and pass the information on to the project manager responsible in the first instance. The business line's new measures team may also provide assistance.

If the issues raised by the taxpayer have significant policy or administrative implications, the matter may need to be referred to Treasury. In these cases, discuss this with the enquirer, and arrange to follow up. If the taxpayer's purpose was to raise policy issues, our undertaking to refer the issues to the Treasury may satisfy them. Treasury also invites members of the public to make comments on draft legislation as part of the public consultation process.

4. Delaying advice for new measures

It may be sensible to delay issuing advice if royal assent or registration on the Federal Register of Legislation is imminent and certain (for example, when a Bill has passed and is waiting to receive royal assent). This will allow the advice to reflect the proposed changes to the law, and therefore manage the matter on hand accordingly.

Discuss the case with your manager and the project team responsible for the measure.

Discuss the proposal to delay advice with the taxpayer and explain that it will allow the advice to cover the changes in the law.

5. When the proposed law will apply before the date of royal assent or registration on the Federal Register of Legislation

Administrative problems may arise when a proposed law or regulation change has an application date before its royal assent or registration on the Federal Register of Legislation. This is commonly known as a retrospective law change.

Where practicable the way we intend to administer retrospective legislation will be communicated to affected taxpayers. More broadly, it may be posted on our website. In these circumstances, the Policy Implementation Committee (PIC) in Policy, Analysis and Legislation (PAL) will endorse the proposed administrative strategy prior to it being communicated to taxpayers.

If you require further assistance, contact your business line's new measures relationship manager.

6. Law design processes

We are involved with Treasury at all stages of the process of developing law, as set out in the ATO - Treasury Protocol (see link under 'More information' section 7).

The protocol sets out the process between the two agencies for tax design.

When new measures are proposed, the PIC considers:

- the most appropriate course of action for both the ATO and taxpayers affected by the process
- any administrative problems likely to arise when application dates and royal assent or registration on the Federal Register of Legislation do not coincide
- the form of any general advice that can be provided to taxpayers about the changes to the law.

PAL help business lines and the responsible project team to prepare appropriate information for taxpayers about the changes.

These are submitted to the PIC for consideration and approval.

If you receive enquiries about new measures and do not know what the communication strategy is, or whether one is needed, contact your business line's new measures relationship manager.

7. More information

For more information, see:

- ATO - Treasury Protocol
- Connect with your Relationship Manager (internal link only)
- Public Advice and Guidance – BSL PAG Unit contacts (internal link only)

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ATTACHMENT A

Appropriate responses at each stage of the law design process

Announced changes to tax law	
Stage of law design process	**How to respond**
Press release or other form of announcement, but no legislative details	a) Respond to taxpayer with any approved scripting and, if necessary, help them access the publicly available material on the proposed changes to tax laws. b) If the announced changes affect existing tax law, base advice on existing law, with the qualification that a law change has been announced and, if enacted, may affect the advice. c) Where appropriate (including oral or email requests), engage the taxpayer, and gather information on the issues they raise. d) Share useful and relevant issues and information with Treasury or the relevant project manager. e) If appropriate, explain the roles of the Treasury and the ATO in the tax policy and legislation design process to the taxpayer.
Law publicly exposed, eg, Exposure Draft, Bill introduced into Parliament	a) to e) as above. Do not provide indicative interpretative advice on the new measures.
If proposed law will apply before royal assent of Bill (or registration on the Federal Register of Legislation)	Consult PAL and prepare draft advice for endorsement by the PIC.
If the Bill is awaiting royal assent (or regulation awaiting registration on the Federal Register of Legislation)	Tell the taxpayer that the Bill is awaiting royal assent, or the regulation is awaiting registration on the Federal Register of Legislation. Explain that information about existing law will be obsolete as soon as this process is complete. Recommend delaying advice pending the enactment of the new laws. With consent, delay issuing advice until after royal assent or registration on the Federal Register of Legislation.
Proposed changes to tax law that have *not* been announced	
Do not refer to unannounced changes. All advice must reflect the existing law.	