PS LA 2002/10 - Signing and executing documents in the ATO

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ATO Practice Statement Law Administration

PS LA 2002/10

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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 ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: **Signing and executing documents in the ATO**

PURPOSE: **To instruct authorised officers on the proper method of signing and executing documents that evidence the exercise of a statutory power**

STATEMENT

1. This Practice Statement has been split into two sections, as follows:

   - signing and executing documents which evidence a decision made under a Tax Law; and
   - signing and executing international treaties or agreements

Signing and executing documents which evidence a decision made under a Tax Law

2. Before signing or executing any notice, determination, instrument or other document which gives rise to a reviewable decision, officers must ensure that they have been authorised by a delegate of the Commissioner to exercise the power in question. This includes where officers attach an electronic signature to any document, or applying a delegate's stamp to any document. Officers should refer to the *Guidelines for Taxation Authorisations*, found on ATOnet, to determine whether they have been properly authorised to exercise the power in question. If the matter is significant or officers are unsure of their ground, they should contact Michelle Rak in the Legal Services Branch, National Office.

3. Documents containing non-reviewable decisions (such as acknowledgments) may be signed by officers without using the name of a delegate.

4. In signing or executing any notice, determination, instrument or other document which gives rise to a reviewable decision, authorised officers must follow the directions below to ensure that the document is executed in a way that will give it legal effect. It must bear the name of the delegate and clearly indicate that the delegate is the accountable decision-maker.

5. Settlement deeds and agreements are not dealt with in this Law Administration Practice Statement but are covered in the Code of Settlement Practice.

6. Part IVA determinations are also not dealt with in this Practice Statement but are covered in Law Administration Practice Statement PS LA 2005/24.

7. If Court rules or practice require a legal document to be executed in a different way from the directions contained in this Law Administration Practice Statement, officers should follow the relevant requirements of the Court rules or practice. Documents that will be going to court such as writs for the recovery of tax should only contain the name of authorised officers in addition to that of the delegate if that is what the particular court allows. Generally courts require the name and title of the delegate with no mention of the authorised officer (see Example 3 below).

8. All instruments should bear the name of the delegate. If an authorised officer is signing or executing an instrument, this should be done by signing in the name of the delegate. That means that the authorised officer writes or types the name of the delegate, attaches the delegate's electronic signature or applies the delegate's stamp above the typed name and title of the delegate.

9. It is recommended that the authorised officer then signs or writes their own name as the person exercising the power on behalf of the delegate. This is done by using the word "per", "per pro" or the abbreviation "pp" (meaning *per procurationem* - by proxy) or another form of words which shows that the authorised officer is not making the decision in their own right and then transcribing the authorised officer's name.

Example 1

"*Name of Deputy Commissioner or delegate written or typed by authorised officer or stamped by authorised officer*

Name of Deputy Commissioner or delegate
DEPUTY COMMISSIONER OF TAXATION/ position held in ATO by delegate

Per _____
[name of authorised officer]"

10. Reference to the authorised officer in any related documentation should make it clear that the authorised officer acted on behalf of the delegate and in the name of the delegate, such as:

Example2

"Please find attached a determination made on behalf of the Deputy Commissioner and in the name of the Deputy Commissioner by me, a duly authorised officer."

11. Where the document must be witnessed, the witness should indicate that the document was signed by the authorised officer, using words such as "Signed by [name of authorised officer], the duly authorised officer of the Deputy Commissioner in my presence": *DCT v. Boxshall* (1988) 19 ATR 1822.

12. If particular Business Lines have guidelines which contain more specific requirements that do not contradict the ones in this Law Administration Practice Statement, officers should follow those guidelines in addition to the Law Administration Practice Statement. For instance, officers in Large Business and International are subject to an additional requirement to use handwriting only, not a stamp or facsimile of the Deputy Commissioner's signature. These officers are also

required to indicate using "per" the name of the officer authorised to exercise the power on behalf of the delegate. This name need not be signed.

"*P M Duffus*

[Paul Duffus' name written in <u>your</u> handwriting]
DEPUTY COMMISSIONER OF TAXATION

Per _____
[name of authorised officer]"

13. There are a number of other ways of signing documents that are legal but staff are recommended not to follow them. If, however, officers execute documents using any of the methods set out below, the signature block will be valid.

Example 3

"*Name of Deputy Commissioner or delegate stamped by authorised officer*

Name of Deputy Commissioner or delegate
DEPUTY COMMISSIONER OF TAXATION/ position held in ATO by delegate"

Example 4

"*Name of Deputy Commissioner or delegate written or typed by authorised officer or stamped by authorised officer*

Name of Deputy Commissioner or delegate
DEPUTY COMMISSIONER OF TAXATION/ position held in ATO by delegate

Determined by me as authorised officer,

[Signature of authorised officer]

Name of authorised officer."

Example 5

" *Electronic signature of Deputy Commissioner or delegate attached by authorised officer*

Name of Deputy Commissioner or delegate
DEPUTY COMMISSIONER OF TAXATION / position held in ATO by delegate

Example 6

" Electronic signature of Deputy Commissioner or delegate attached by authorised officer

Name of Deputy Commissioner or delegate

DEPUTY COMMISSIONER OF TAXATION / position held in ATO by delegate

Determined by me as authorised officer,

[Signature or name of authorised officer]

EXPLANATION

14. There are three categories of officer in the ATO who can exercise statutory power. Each category has a different legal status. They are:

(i) Statutory office-holder - this category of official is invested directly by the Parliament with statutory power. The Commissioner and Second Commissioners are Statutory office-holders and delegates of the Parliament in the tax laws. The Commissioner is given the general administration of the tax laws (see, for example, section 8 of the *Income Tax Assessment Act 1936*). Subsection 6D of the *Taxation Administration Act 1953* provides that the Second Commissioners have all the powers and functions of the Commissioner except the power of delegation, the general power of administration and the power to report to Parliament. Most powers under the tax laws are given directly to the Commissioner and a substantial number to the Deputy Commissioners as well. A small number of powers are also given directly to the Second Commissioners.

(ii) Delegate - this category of official is delegated powers by the statutory office-holders. Section 8 of the *Taxation Administration Act 1953* gives the Commissioner a general power of delegation. The Commissioner may delegate to a Deputy Commissioner or any other person. The effect of the delegations is that delegates can exercise the power autonomously, in their own right and in their own name. Subsection 8(2) of the *Taxation Administration Act 1953* provides that the exercise or performance of a power or function by a delegate is deemed to have been exercised or performed by the Commissioner. That means that the delegate is responsible for the exercise of the power, exercises the power on his or her own behalf, and cannot be instructed by the statutory office-holder how to exercise the power. In the ATO, the Commissioner has delegated most of his statutory powers to the Deputy Commissioners and officers in the Senior Executive Service. In a few rare instances such as the access powers and the power to request information from telecommunications providers, the delegations extend to EL2 officers as well.

(iii) Authorised officer - this category of official is also known as an agent or *alter ego* of the delegate. The official has been authorised to exercise the power of the principal or the delegate. The authorised officer is not invested with any power in their own right and is not responsible in law for the exercise of the power. An act done by an authorised officer has the legal effect of an act done personally by the delegate. Authorised officers exercise statutory power under the instruction of the delegate or principal and in the name of the delegate or principal.

15. Officers must sign documents that evidence the exercise of a statutory power in accordance with their legal status. In essence this means that authorised officers should not sign their own name unless they have already signed the name of the delegate and used a form of words outlined in paragraph 8. They are exercising the delegate's power, and are required in law to use and sign the name of the delegate.

16. A document that is properly signed will be protected by regulation 172 of the Income Tax Regulations and regulation 45 of the Taxation Administration regulations.

17. Regulation 172 of the Income Tax Regulations (and its counterparts in other legislation) creates certain presumptions in relation to signatures. That regulation is as follows:

> "**(1) Judicial notice taken**
> Judicial notice shall be taken of the names and signatures of the persons who are, or were at any time, the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner.
>
> **(2) Document deemed signed**
> A certificate, notice or other document bearing the written, printed or stamped name (including a facsimile of the signature) of a person who is, or was at any time, the Commissioner, a Second Commissioner, a Deputy Commissioner or a delegate of the Commissioner in lieu of that person's signature shall, unless it is proved that the document was issued without authority, be deemed to have been duly signed by that person."

18. These regulations have the effect of placing the initial burden of proof on the person challenging the validity of a document to adduce evidence that the document was issued without authority, provided the name of the Deputy Commissioner or other delegate appears on a document.

19. For legislation which does not have an equivalent of regulation 172, section 150 of the *Evidence Act 1995* provides a measure of protection and the common law provides an equivalent protection through a line of judicial decisions starting with *R v. Justices of Kent (1873) 8 QB 305.*

Signing and executing international treaties or agreements

20. The signing of International Agreements is regulated by the Department of Foreign Affairs and Trade's Treaties Handbook. This Handbook states, at paragraph 71, that signature should occur at the same place and at the same time; therefore electronic signature is not contemplated. It is not Australian protocol to use electronic signatures for this purpose.

Amendment history

Date of amendment	Part	Comment
25 February 2008	Various Paragraphs 2 & 6 Contact Details	Included new para 1, 20 and examples 5 & 6. Minor changes. Updated.
26 February 2010	Contact Details	Updated

subject references:	administrative law; authorisations; authorised officer; delegate; signing and executing documents; statutory office holder; reviewable decision
legislative references:	ITAA 1936 8 ITAA 1936 8(2) TAA 1953 6D Evidence Act 1995 150 IT Reg 172 TA Reg 45
related practice statements:	PS LA 2005/24
case references:	*DCT v. Boxshall* (1988) 19 ATR 1822; *R v. Justices of Kent* (1873) 8 QB 305
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