

# ***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) .



This Law Administration Practice Statement guides you in 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 is this Practice Statement about?

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

The ATO occasionally receives 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.

### 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 1953)<sup>4</sup> and is legally entitled to institute, and appear in, legal proceedings in their official name<sup>5</sup>
- the TAA 1953 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
- taxation liabilities must be paid in Australian currency.<sup>10</sup>

<sup>1</sup> Section 3 of the *Commonwealth of Australia Constitution Act 1901* (Constitution Act). 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> Section 51(ii) of the Constitution in section 9 of the Constitution Act.

<sup>3</sup> Section 4A of the *Taxation Administration Act 1953* 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 1953; the Commissioner may also delegate their duties to Deputy Commissioners and other ATO officers per section 8 of the TAA 1953; *O'Reilly v Commissioners of State Bank of Victoria* [1983] HCA 47.

<sup>5</sup> Sections 15 and 255-5 of Schedule 1 of the TAA 1953.

<sup>6</sup> *Josse & Anor 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 1953 and section 6 of the Constitution Act.

<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*.

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

### 3. How will we respond to correspondence claiming tax laws are invalid or do not apply?

Any correspondence of this type which is not part of an ongoing matter, or where there is any doubt about the validity of the taxpayer's arguments, should be escalated in accordance with the published [Constitutional correspondence](#) (internal link only) procedures.

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 unsupported 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.

Given that many claims of this type have been rejected by the Courts, it is not appropriate for ATO staff to spend time and resources producing detailed responses to these claims.

When ATO staff are responding to correspondence of this type, generally the appropriate response will be a short letter of rejection, directing the taxpayer to this Practice Statement for further information.

We will also suggest taxpayers 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 the:

- [Taxpayers' Charter](#)
- Constitution Act
- TAA 1953

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<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].