PS LA 2004/6 - The ATO role in providing information or advice on the potential application of announced changes to the tax law , or where legislative change is contemplated but not announced.

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Practice Statement Law Administration

PS LA 2004/6

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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:	**The ATO role in providing information or advice on the potential application of announced changes to the tax law,[1] or where legislative change is contemplated but not announced**
PURPOSE:	**To outline the assistance ATO personnel can give taxpayers in relation to announced or unannounced changes to the tax law**

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[1] This covers all taxation laws and regulations which the Commissioner administers.

STATEMENT

Giving advice about proposed changes to the tax law where the changes have been announced publicly

1. ATO personnel must not provide indicative interpretative advice[2] on legislation prior to its Royal Assent, or on regulations prior to their gazettal. Any such advice could mislead taxpayers if the legislation or regulations are altered prior to Royal Assent or gazettal.

2. ATO personnel may assist taxpayers who make enquiries about proposed changes to the tax law announced by Government. However, any advice or information should be limited to the public announcement and other publicly released information in the source documents that announced the proposed law change (for example, Press Release, Explanatory Memorandum, draft legislation).

3. ATO personnel should take the opportunity to gain an understanding of the nature of the taxpayer's issues or concerns (for example, regarding the policy intent, interpretative issues, unintended consequences, risks to the revenue, effect on compliance costs, areas of uncertainty). This information should be passed on to the ATO project manager responsible for the proposed measure (see paragraph 19 of this practice statement for additional information and appropriate link).

4. Where the issues raised by the taxpayer have significant policy or administrative implications, ATO personnel should tell the enquirer that their issues will be referred to the Treasury, and arrange follow-up of the matter. If the taxpayer's purpose in contacting the ATO is to raise policy issues, the ATO's undertaking to refer the issues to the Treasury may satisfy the taxpayer's request.

5. Where Royal Assent or gazettal is imminent and certain (for example, when a Bill is waiting to receive Royal Assent), ATO personnel should discuss this with the person requesting advice. ATO personnel should explain that a brief delay in the issuing of the advice will allow the advice to reflect the proposed changes to the law, and therefore to deal properly with the subject matter. ATO personnel must discuss proposals for delaying advice with their supervisor and the ATO project team responsible for the measure.

Giving advice on existing tax laws when proposed changes to the law have been announced publicly

6. There will be instances where ATO personnel are asked to give advice (for example, general advice, public or private rulings, telephone calls) about the application of existing law to particular situations when the Government has publicly announced proposals to change that law.

7. In these cases, the advice must be based on the existing law only. The advice should be qualified by indicating there is a prospect of law change which, if enacted, may affect the advice being given. In referring to any proposed changes ATO personnel should only refer and adhere to the words of the source document that announced the proposed law change.

[2] PS LA 2000/4 has been withdrawn with effect from 7 May 2004.

Giving advice on announced changes where the application date has already passed, or may pass prior to Royal Assent or gazettal of the proposed law or regulation

8. Administration issues are likely to arise where a proposed law or regulation change has an application date prior to its Royal Assent or gazettal, or where it is uncertain whether the proposed law or regulation will receive Royal Assent or be gazetted before its application date. Taxpayers potentially affected by the change may seek advice on the most appropriate course of action to be followed in meeting their compliance obligations pending enactment of the proposed law change.

9. In these circumstances the ATO's Policy Implementation Forum (PIF) will determine the appropriate form of advice that should be provided to taxpayers. PIF determinations in relation to these changes are currently communicated to affected taxpayers using the most appropriate medium. They will also be posted on the ATO's website. (For a discussion of the role of the PIF, see paragraphs 18 and 19 of this practice statement)

10. ATO personnel who require further assistance in such cases, should contact their business line's new measures contact officer,[3] or Corporate Relations directly (see paragraph 19 of this practice statement).

Unannounced changes to the tax law

11. There may be occasions where ATO personnel are aware of possible changes to the law that have not yet been made public.

12. It is not appropriate to mention or discuss unannounced changes when dealing with external parties (for example, in advice to taxpayers or in a consultation forum). Doing so would be a breach of the ATO's security policies and could expose ATO personnel to disciplinary and/or other actions. Any advice or information about such provisions must reflect the existing law only.

EXPLANATION

13. The Government's responses to the recommendations contained in the final report of the review of business taxation titled *A Tax System Redesigned* (the Ralph Report), and changes announced in *A New Tax System* led to significant changes in the Australian taxation system.

14. During this period of change the ATO had responsibility for providing advice to taxpayers about the potential effect of proposed legislation intended to implement these changes*. Law Administration Practice Statement PS LA 2000/4 Provision of advice to taxpayers on the potential application of announced proposed changes to the tax system* set out the administrative practices adopted by the ATO in providing written indicative advice in respect of laws which had not received Royal Assent, or regulations which had not been gazetted.

[3] The link to the BSL new measures contacts is available for ATO personnel in the Other references section at the end of this practice statement.

15. Under PS LA 2000/4, advice would only be provided where the relevant proposed legislation had been introduced into the Parliament, and would only apply where the enacted legislation was not materially different from the proposed legislation. The qualified status of the advice limited the degree of certainty that could be provided to taxpayers, and applications for such advice had to meet specific disclosure requirements. PS LA 2000/4 was a temporary strategy introduced to deal with a limited category of legislative and regulatory measures at a time of significant legislative change. These features resulted in only a small number of requests for advice being sought under the practice statement. PS LA 2000/4 has since been withdrawn.

Responsibilities for various aspects of the tax design process

16. A protocol exists between the ATO and the Treasury which describes the responsibilities for various aspects of the tax design process. It is an agreed framework within which the ATO is responsible for contributing its views and experience at all stages of the tax policy and legislation design process, particularly with respect to advising on the administrative impacts of proposed changes to the law. Under the protocol, the ATO and the Treasury will work cooperatively to provide high quality advice to Government on taxation system issues, consistent with the principles of integrated tax design. The protocol envisages considerable dialogue between the ATO and the Treasury both in the development of new tax law and in the early stages of implementation of new legislation.

17. The Protocol recognises that legislation which has received Royal Assent represents the ultimate statement of intent by the Parliament. It also recognises that the ATO has the exclusive role of interpreting and administering the tax law once Royal Assent has been granted or regulations are gazetted.

    This Protocol is available for ATO personnel under Other references at the end of this practice statement.

How the ATO deals with the legislative process for new or changed tax law

18. The PIF undertakes a scoping process in respect of proposed new and changed law. The scoping process sets accountabilities for managing the ATO's input to the legislative process and determines:

    - the most appropriate course of action for both the ATO and taxpayers affected by the process
    - any administration problems likely to arise when application dates and Royal Assent or gazettal do not coincide, and
    - the form of any general advice that can be provided to taxpayers about the changes to the law.

    Corporate Relations[4] and Integrated Tax Design will assist business lines and the responsible ATO project team in preparing appropriate material for PIF consideration on the form of advice to taxpayers (see paragraph 9 of this practice statement). In many cases, the responsible ATO project team will provide ATO personel with appropriate scripting in relation to announced measures.

[4] The link to Corporate Relations contacts is available for ATO personnel in the Other references section at the end of this practice statement.

19. ATO personnel who receive requests about proposed changes to the law, and who are not aware of the appropriate Treasury officer, or are unaware of the communication strategy endorsed by the PIF, or whether such a communication strategy is required, should discuss the matter with their business line's new measures contact officer[5] for their business line.

ATO practice for responding to requests on proposed changes

20. The existing relationships between the ATO and taxpayers, professional bodies and tax practitioners will often result in requests for information or advice on proposed changes to the tax law being made to ATO personnel or an ATO call centre. The ATO will continue to provide limited advice to clients in the circumstances outlined in this practice statement.

21. ATO personnel should be able to deal with most requests for advice or information by providing publicly available information as contained in the source documents announcing the proposed law change (see paragraph 2 of this practice statement), or some other form of advice agreed to by the PIF (see paragraph 18 of this practice statement). ATO scripting prepared in respect of the measure (see paragraph 18 of this practice statement) is likely to assist in handling these requests.

22. In cases where announced legislation or regulation has an application date prior to its receiving Royal Assent or gazettal, general advice should be provided to taxpayers in accordance with the form of communication endorsed by the PIF (see paragraph 9 of this practice statement).

[5] The link to the BSL new measures contacts is available for ATO personnel in the Other references section at the end of this practice statement.

ATTACHMENT A

Summary: response of ATO personnel to requests for advice on tax legislation or regulations prior to Royal Assent or gazettal.

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 provided scripting and, if necessary, help them access the publicly available material that announced proposed changes to tax laws (paragraphs 2, 18 & 21). b) If announcement of changes affects existing tax law, advice to taxpayer should be based on existing law with the qualification that a law change has been announced and, if enacted, may affect the advice (paragraph 7). c) Where appropriate (including oral or email requests), engage the taxpayer and gather information on issues raised (paragraph 3). d) Share information with the Treasury or the relevant ATO project manager to assist the Treasury in performing its role in developing the legislation/regulations (paragraphs 4 & 16). e) If appropriate, explain the roles of the Treasury and the ATO in the tax policy and legislation design process (paragraphs 16 & 17).
Law publicly exposed, eg. Exposure Draft, Bill introduced into Parliament	a) to e) as above. f) Do not provide indicative interpretative advice (paragraph 1).
If proposed law will apply before Royal Assent of Bill (or gazettal of regulations)	Consult Corporate Relations and Integrated Tax Design and prepare draft advice for endorsement by the PIF (paragraphs 8 to 10, 18 and 19).
If the Bill is awaiting Royal Assent (or regulation awaiting gazettal)	Tell taxpayer that Bill is awaiting Royal Assent or regulation awaiting gazettal; explain that information about existing law will be obsolete as soon as this process is complete; recommend delaying advice pending enactment of new laws. With consent, delay issuing advice until after Royal Assent or gazettal (paragraph 5).
PROPOSED CHANGES TO TAX LAW THAT HAVE NOT BEEN ANNOUNCED	
It is not appropriate to refer to unannounced changes. Advice must reflect the existing law (paragraphs 11 & 12).	

Amendment history

Date of amendment	Part	Comment
10 April 2014	Contact details	Updated.
2 July 2012	Throughout	Updated to reflect the changed responsibilities as a result of the implementation of the TTTDM model.
28 February 2008	Related practice statements	Reference to PS LA 2008/3 updated
24 January 2008	Paragraph 10, 18 & 19	References to Policy Management Division updated to Governance and Government Relations

Subject references	New tax system advice
Related practice statements	PS LA 2000/4 PS LA 2008/3
Other references	ATO - Treasury Protocol BSL new measures contacts (internal link only) Corporate Relations contacts (internal link only)
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