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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This document has changed over time. This version was published on *24 January 2024*

Generated on: 6 November 2026, 02:25:44 AM

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 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 do not 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.

1. What is this Practice Statement 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 (FRL)
- 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 FRL. After the Australian 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 Australian 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 FRL (see section 4 of this Practice Statement).
- 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 section 4 of this Practice Statement).
- *Never* mention or discuss proposed changes to the law that have not been publicly announced.
- Assist taxpayers with their enquiries 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, you can contact Policy, Analysis and Legislation (PAL) (see section 7 of this Practice Statement).

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

Also see the table in Attachment A to this Practice Statement 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 the taxpayer's concerns and pass the information on to the project

manager responsible in the first instance. PAL may also provide assistance (see section 7 of this Practice Statement).

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 their concern. If the taxpayer's purpose was to raise policy issues, our undertaking to refer the issues to 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 FRL 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 this 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 FRL. 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 published on our website. In these circumstances, the Policy Implementation Committee (PIC) in PAL will endorse the proposed administrative strategy prior to it being communicated to taxpayers.

Date issued: 7 May 2004
Date of effect: 7 May 2004

If you require further assistance, you can contact PAL (see section 7 of this Practice Statement).

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 section 7 of this Practice Statement).

The protocol sets out the process between the 2 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 FRL do not coincide
- the form of any general advice that can be provided to taxpayers about the changes to the law.

PAL helps 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, you can contact PAL (see section 7 of this Practice Statement).

7. More information

For more information:

- see ATO – Treasury Protocol
- contact PAL at LegislativeGovernance@ato.gov.au
- see Business line PAG unit contact details (internal link only)

ATTACHMENT A

Appropriate responses at each stage of the law design process

Table 1: Appropriate responses where changes to the tax law have been announced

Stage of law design process	How to respond
Media release or other form of announcement, but no legislative details	• Respond to taxpayer with any approved scripting and, if necessary, help them access the publicly available material on the proposed changes to tax laws. • 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. • Where appropriate (including oral or email requests), engage the taxpayer and gather information on the issues they raise. • Share useful and relevant issues and information with Treasury or the relevant project manager. • If appropriate, explain the roles of Treasury and the ATO in the tax policy and legislation design process to the taxpayer.
Law publicly exposed; for example, Exposure Draft, Bill introduced into parliament	• If appropriate, explain the roles of Treasury and the ATO in the tax policy and legislation design process to the taxpayer. • Do not provide indicative interpretative advice on the new measures.
If proposed law will apply before royal assent of Bill (or registration on the FRL)	• Consult PAL. • Prepare draft advice for endorsement by the PIC.
If the Bill is awaiting royal assent (or regulation awaiting registration on the FRL)	• Tell the taxpayer that the Bill is awaiting royal assent or the regulation is awaiting registration on the FRL. • 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 FRL.

Where proposed changes to the tax law have *not* been announced:

- Do not refer to unannounced changes.
- All advice must reflect the existing law.

Amendment history

24 January 2024

Part	Comment
All	Changes made throughout to align with current format and style preferences
Contact details	Updated

20 February 2018

Part	Comment
All	Update

1 February 2018

Part	Comment
All	Updated to new PS LA format and style

10 April 2014

Part	Comment
Contact details	Updated

2 July 2012

Part	Comment
Throughout	Updated to reflect the changed responsibilities as a result of the implementation of the TTTDM model

29 February 2008

Part	Comment
Related Practice Statements	Reference to PS LA 2008/3 updated

24 January 2008

Part	Comment
Paragraph 10, 18 & 19	References to Policy Management Division updated to Governance and Government Relations

ATO references

ISSN	2651-9526
ATOlaw topic	Administration ~~ Internal ATO processes

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