PS LA 2005/13 - Taxpayer Alerts

This cover sheet is provided for information only. It does not form part of *PS LA 2005/13 - Taxpayer Alerts*

This document has changed over time. This version was published on *19 August 2005*

Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2005/13

This practice statement is withdrawn with effect from 23 October 2008 and has been replaced by PS LA 2008/15.

FOI status: may be released

This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax Office staff must follow their business line's escalation process.

SUBJECT: **Taxpayer alerts**

PURPOSE: **To provide instructions on:**

- **when and how to prepare a taxpayer alert and submission supporting its publication;**
- **the approval and publication of taxpayer alerts, and**
- **the alteration and withdrawal of taxpayer alerts**

Table of contents **Paragraph**

STATEMENT	**1**
Taxpayer alerts	2
Media releases, question time briefs and notification of call centres and other Tax Office stakeholders	17
Submission supporting the publication of a taxpayer alert	19
Peer review of draft taxpayer alert and submission supporting its publication	21
Performance standards	22
Alteration or withdrawal of a taxpayer alert	23
EXPLANATION	**25**
Taxpayer alerts	25
Procedural matters relating to the approval and publication of taxpayer alerts and the publication of the applicable ATO view	28
Media release	33
Question time brief	37
Notification to call centres and other Tax Office stakeholders	39
Submission supporting the publication of a taxpayer alert	41

Potential legal risks 41
Taxpayer identity 46
Previous or current consideration by the Tax Office 53
Potential commercial impact 54
Alteration or withdrawal of a taxpayer alert 55

STATEMENT

1. This law administration practice statement replaces Law Administration Practice Statement PS LA 2001/15.

Taxpayer alerts

2. Taxpayer alerts are intended to be an early warning to taxpayers and their advisers of significant existing, new or emerging aggressive tax planning schemes that the Tax Office has under risk assessment.
3. Aggressive tax planning is tax planning that goes beyond the policy intent of the law and involves purposeful and deliberate approaches to avoid any type of tax, superannuation obligation or excise duty. It undermines the integrity of the revenue system and community confidence in the fairness and equity of that system. Aggressive tax planning activity may be found in all market segments, however the types of activity differ across the segments.
4. A taxpayer alert contains a title and brief general description of the scheme in question and also highlights the features which the Tax Office considers give rise to taxation issues. The Tax Office will not publish separate taxpayer alerts to describe each variation or mutation of the scheme in question.
5. Taxpayer alerts reflect the Tax Office's preliminary examination of the available information in respect of the scheme in question.
6. In publishing a taxpayer alert the Tax Office is seeking to assist taxpayers who have entered into a scheme, or who may be contemplating entering into a scheme, to make informed decisions about their tax affairs. Those taxpayers can seek a formal determination of the ATO view in respect of their particular circumstances through a private ruling (the *Taxation Administration Act 1953* sets out circumstances where the Commissioner may decline to issue such a ruling). They may also seek independent advice from tax professionals not associated with the scheme, or speak with the contact officer named in the taxpayer alert.
7. Where a business line (the sponsoring business line) identifies an existing, new or emerging aggressive tax planning scheme, whether widely marketed or tailored to the circumstances of a particular taxpayer or group of taxpayers, **it is mandatory** for that business line to consider whether a taxpayer alert should be published.

8. Tax planning schemes that include one or more of the following features may warrant the publication of a taxpayer alert:

- contrivance and artificiality in the method of execution
- little or no real underlying business activity or purpose
- the claimed tax benefit may be significant in realising an economic return
- complete or substantial removal of any risk to a taxpayer
- the contrived transfer of a tax benefit
- limited or non-recourse financing associated with a round-robin flow of funds
- little cash outlay associated with borrowing of funds under a capitalising debt facility
- a mechanism for winding up or exiting a scheme before net income is generated for an investor
- assumptions, including 'blue sky' projections, that can lead to seemingly excessive valuations of assets resulting in inflated deduction claims
- use of tax-exempt entities, especially charities, to wash income
- transactions involving tax havens, and
- transactions which do not appear to be legitimate business dealings.

9. Where the sponsoring business line decides to propose a taxpayer alert be published, it must nominate appropriate officers (the business line nominated officers) to draft, peer review and to act as the public contact officer in respect of that taxpayer alert.

10. The business line nominated officers engaged in drafting a taxpayer alert must contact Strategic Intelligence Analysis (SIA) to provide details of the scheme and to obtain advice and assistance from SIA in preparing a taxpayer alert and a submission supporting its publication (email the Taxpayer alerts outlook address).

11. Taxpayer alerts are prepared on a standard template format available through the SIA Home Page on the intranet (a link to this page is available at the end of this document). SIA has the role of advising and assisting the business lines with the preparation of taxpayer alerts and the supporting submissions. SIA is responsible for ensuring consistency in content and style of taxpayer alerts.

12. SIA also ensures that draft taxpayer alerts and the supporting submissions are referred to the Aggressive Tax Planning Risk Review Panel for review. The Aggressive Tax Planning Risk Review Panel may determine that further work is required or it may recommend to the First Assistant Commissioner, Aggressive Tax Planning that the draft be published as a taxpayer alert.

13. Draft taxpayer alerts from the Goods and Services Tax (GST) business line will be reviewed and cleared by the GST business line risk review process and will not be reviewed by the Aggressive Tax Planning Risk Review Panel. Draft taxpayer alerts which have been cleared by the GST business line risk review process will be forwarded by that business line directly to the First Assistant Commissioner, Aggressive Tax Planning for consideration for publication.

14. Preparation of a taxpayer alert is a priority where the scheme raises issues for which there is no ATO view published on the Tax Office's external website.

15. Technical taxation issues identified by taxpayer alerts are subject to the Priority Technical Issue process. They should be escalated as early as possible in accordance with Law Administration Practice Statement PS LA 2003/10 The Management of 'Priority Technical Issues'. The ATO view may subsequently be published in various ways including a ruling, determination or an ATO Interpretative Decision (see the third dot point in paragraph 53 for more detail on how the ATO view may be published).

16. Officers whose work involves schemes which have the same or similar features as those described in a published taxpayer alert must provide details of those schemes to the contact officer named in that taxpayer alert.

Media releases, question time briefs and notification of call centres and other Tax Office stakeholders

17. The sponsoring business line is responsible for preparing a draft Tax Office media release and a question time brief (QTB) in respect of the publication of the taxpayer alert. In addition, the sponsoring business line is responsible for providing advance notice to any Tax Office call centres that are likely to receive calls following the publication of the taxpayer alert and for drafting appropriate call centre scripts in respect of that taxpayer alert. More detailed instructions on these requirements are contained in the 'Explanation' section of this practice statement.

18. The sponsoring business line is also responsible for identifying other Tax Office stakeholders likely to be affected by the publication of the taxpayer alert and for ensuring that they are notified of the proposed publication.

Submission supporting the publication of a taxpayer alert

19. In making the decision to publish a taxpayer alert the Tax Office must strike a balance between the desirability of providing an early warning to taxpayers and taking account of the legal, administrative and commercial risks which may arise following the publishing of a taxpayer alert.

20. Each draft taxpayer alert must be supported by a business line submission to the First Assistant Commissioner, Aggressive Tax Planning. The submission should address all of the following headings as appropriate (within the time frame specified in paragraph 22):

- a description of the scheme (including a diagram if appropriate), how and when it was identified and relevant background information about promoters, advisers and the nature and extent of marketing
- the reasons why a taxpayer alert is appropriate including:
  - revenue at risk
  - numbers of taxpayers involved in the scheme in current and past years
  - previous Tax Office advice on the issue(s)
  - the current marketing profile of the scheme in question, and
  - any views expressed by specialist Tax Office panels and committees (for example, General Anti-Avoidance Rules Panel, Public Rulings Panels, Aggressive Tax Planning Steering

Committee, Aggressive Tax Planning Risk Review Panel, Priority Technical Issues Committee and so on)

- a preliminary technical position on the taxation issues arising from the scheme
- the potential legal risks arising from publishing a taxpayer alert (see paragraphs 41 to 52);
- previous or current consideration/action by the Tax Office and the results of searching any relevant accessible Tax Office databases, case management systems and information sources (including for example, the Priority Technical Issues Register and the Public Rulings Program, see paragraph 53);
- the potential commercial impact of the publication of a taxpayer alert on the business of the relevant promoter or others associated with the scheme (see paragraph 54); and
- the supporting evidence including available documents and agreements.

The submission must *expressly* consider any potential legal risks arising, any relevant previous or current consideration by the Tax Office and any potential commercial impact of publishing the taxpayer alert on those promoting the scheme it describes or others associated with that scheme.

Peer review of draft taxpayer alert and submission supporting its publication

21. Both the submission supporting publication and the draft taxpayer alert must be peer reviewed by a business line nominated peer reviewer prior to consideration by the Aggressive Tax Planning Risk Review Panel or, in the case of a draft taxpayer alert from the GST business line, that business line's risk review process.

Performance standards

22. The following performance standards apply in respect of taxpayer alerts:

(i) It is expected that taxpayer alerts and accompanying submissions will be drafted and referred to the relevant risk review panel as a matter of priority once a business line decides to propose that a taxpayer alert should be published. As a general rule this process should be completed within **one month** of that decision.

(ii) In that time the **business line nominated officers** need to:

- o obtain the evidence necessary to establish an accurate description of the scheme
- o prepare and escalate a Priority Technical Issue Proposal in accordance with PS LA 2003/10 The Management of 'Priority Technical Issues'
- o prepare a draft taxpayer alert
- o prepare a submission for publication of the taxpayer alert
- o draft a media release, a QTB and a call centre script, and notify affected call centres and other Tax Office stakeholders

- have the draft taxpayer alert and the submission supporting publication peer reviewed by the business line nominated peer review officer
- provide the draft and submission to SIA to ensure consistency in content and style (except in the case of a draft taxpayer alert from the GST business line)
- SIA should then provide the final drafts of those documents to the Aggressive Tax Planning Risk Review Panel within **two days** of receiving them (except in the case of a draft taxpayer alert from the GST business line), and
- in the case of a draft taxpayer alert from the GST business line – provide the final drafts to the relevant GST risk panel.

(iii) Within a further **two days** the Aggressive Tax Planning Risk Review Panel or the relevant GST risk panel should:

- consider the draft taxpayer alert and supporting submission, and
- determine whether to recommend to the First Assistant Commissioner, Aggressive Tax Planning that the draft be published as a taxpayer alert.

(iv) Where the draft is published as a taxpayer alert, the **business line nominated officers**, **Tax Counsel Network** and, in respect of taxpayer alerts involving precedential issues, the **Centres of Expertise** (see Law Administration Practice Statements PS LA 2003/10 The Management of 'Priority Technical Issues' and PS LA 2003/3 Precedential ATO view) are expected to finalise and publish the ATO view as a matter of high priority. The timeframe and manner of publication of the ATO view will depend on the circumstances surrounding the alert. For example, the timeframe and manner of publication will be influenced where the circumstances surrounding the alert lead to the application of sanctions under the criminal law. The Priority Technical Issues Committee will monitor and, where appropriate, guide progress on finalising the ATO view. The ATO view may subsequently be published in various ways including a ruling, determination or an ATO Interpretative Decision (see third dot point of paragraph 53 for more detail on how the ATO view may be published).

Alteration or withdrawal of a taxpayer alert

23. The publication of a taxpayer alert is principally intended to ensure that taxpayers and their advisers are informed that the scheme described is under risk assessment by the Tax Office. The subsequent publication of the ATO view in respect of a published taxpayer alert ensures that taxpayers and their advisers are further informed of the Tax Office's position in respect of that scheme. Therefore, it is anticipated that the need for a published taxpayer alert to be altered or withdrawn will arise infrequently.

24. Where a business line decides to propose that a published taxpayer alert should be altered or withdrawn, paragraphs 55 to 60 provide instructions on the relevant procedures.

EXPLANATION

Taxpayer alerts

25. Taxpayer alerts are published under the Commissioner's powers of administration including:

- section 8 of the *Income Tax Assessment Act 1936*
- section 3 of the *Fringe Benefits Tax Assessment Act 1986*
- subsection 6(1) paragraphs (e) & (f) of the *Superannuation Industry (Supervision) Act 1993*
- section 43 of the *Superannuation Guarantee (Administration) Act 1992*
- section 30 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, and
- sections 3A & 365-5 of the *Taxation Administration Act 1953*.

26. Generally, taxpayer alerts do not provide the ATO view on the schemes they describe. In most instances, the taxation issues identified by a taxpayer alert will require more detailed analysis before the ATO view can be published. However, in some cases, the taxpayer alert will include a reference to a previous statement of the ATO view which applies to the taxation issues arising from the scheme described in the taxpayer alert.

27. Not all potential tax planning issues that the Tax Office has under risk assessment will be the subject of taxpayer alerts. The absence of a taxpayer alert on a scheme does not mean that the Tax Office accepts or in any way endorses that scheme or the tax consequences that it is promoted as achieving. The Tax Office will not publish separate taxpayer alerts to describe each variation or mutation of the scheme in question. Further, some schemes that are the subject of a taxpayer alert may, on further examination, be found not to be of concern to the Tax Office. In these latter cases the taxpayer alert will be withdrawn (see paragraphs 55 to 60) and a notification published which will be referenced to that taxpayer alert.

Procedural matters relating to the approval and publication of taxpayer alerts and the publication of the applicable ATO view

28. Where the Aggressive Tax Planning Risk Review Panel, or the relevant GST risk review process, forms the view that a draft taxpayer alert should be published it will recommend that course of action to the First Assistant Commissioner, Aggressive Tax Planning. Where that recommendation is accepted, the First Assistant Commissioner, Aggressive Tax Planning will authorise the taxpayer alert and refer it to the Commissioner with the accompanying media release.

29. The Aggressive Tax Planning team in the Office of the Commissioner will work with the Law and Practice business line to ensure that each published taxpayer alert is placed on ATOlaw, the ATO legal database and the Tax Office's external website. As part of that process the author of a taxpayer alert is required to draft a brief descriptor which identifies the alert on the external website. The descriptor must not exceed 256 characters, where each letter, space and punctuation mark is counted as a character.

30. The alert will be noted as a **current** taxpayer alert where the scheme is not covered by an ATO view published on the Tax Office's website.

31. Upon publication of the ATO view in respect of a published taxpayer alert, the Aggressive Tax Planning team in the Office of the Commissioner will work with the Law and Practice business line to ensure that a notation, that the ATO view in respect of that taxpayer alert has been published, is placed on ATOlaw, the ATO legal database and the Tax Office's website and referenced to the taxpayer alert to which it relates.

32. The alert will be noted as a **previous** taxpayer alert where a scheme covered by a published taxpayer alert is one for which there is an ATO view published on the Tax Office's website.

Media release

33. The Tax Office's Media Unit must be consulted to ensure that the drafting and content of the media release is in a style and form suitable for the media. Draft media releases must not be prepared on media release letterhead. Media release letterhead will be added by the Media Unit after the draft release receives final approval from the Commissioner.

34. A draft media release in respect of a taxpayer alert is to be reviewed by the First Assistant Commissioner, Aggressive Tax Planning prior to being referred to the Commissioner with the taxpayer alert (see paragraph 28).

35. The sponsoring business line, in consultation with the Media Unit, is also responsible for nominating a media trained officer, usually a Senior Executive Service (SES) spokesperson, to be available to respond to media interest generated by the media release and the taxpayer alert. The Media Unit must be advised of the spokesperson's contact details (business and after hours). The spokesperson must be available on the day of the release and at least three days following.

36. The Media Unit will organise the final review and approval by the Commissioner of the media release.

Question time brief

37. The sponsoring business line must prepare a QTB in advance of the publication of each taxpayer alert. The pro-forma template for QTBs must be used and is available in the Tax Office document 'Guide to Question Time Briefs' (a link to this document is available at the Other References section at the conclusion of this practice statement).

38. Parliamentary Services is responsible for ensuring QTBs are appropriately worded and made available to the offices of the Treasurer and the Minister for Revenue and Assistant Treasurer. The Tax Office document 'Guide to Question Time Briefs' provides more detailed guidance on the content and process for QTBs. In the context of a taxpayer alert a draft QTB should focus on:

- setting out the principal facts regarding the taxpayer alert's content
- a brief examination of the background circumstances that led to the taxpayer alert being necessary, and
- the Tax Office's purpose in issuing the taxpayer alert.

Notification to call centres and other Tax Office stakeholders

39. The sponsoring business line is responsible for identifying Tax Office stakeholders likely to be affected by the publication of the taxpayer alert and for ensuring that they are notified of the proposed publication.

40. Tax Office call centres require advance notice of publications which are likely to result in calls from the public. Prior to the publication of a taxpayer alert, the sponsoring business line must provide advance notice to the call centres likely to receive calls following the publication of that taxpayer alert. Business line nominated officers authoring a draft taxpayer alert must also prepare suitable draft scripts for use by call centre officers and arrange for these to be cleared and approved in accordance with the procedures applicable to the particular call centre concerned.

Submission supporting the publication of a taxpayer alert

Potential legal risks

41. The submission supporting the publication of a taxpayer alert must consider the legal risks which may arise, including:

- the potential for criminal liability for breach of the provisions listed in Appendixes A and B of Corporate Management Practice Statement PS CM 2004/07 (G) – 'Secrecy and privacy obligations of Tax Office employees' (link available in the Other References section at the conclusion of this practice statement); these provisions are designed to protect client information
- civil claims for compensation for unlawful disclosure of personal information of clients under the *Privacy Act 1988* and adverse criticism by the Privacy Commissioner
- civil claims for compensation for breach of client confidence in respect of material supplied by a client to the Tax Office in confidence
- civil claims for compensation arising out of defamatory statements in alerts about taxpayers or others
- the possibility that statements in alerts could result in successful judicial review of future Tax Office decisions (for example, it could be alleged that the Tax Office had pre-judged a particular issue)
- claims for compensation arising out of negligent misstatements in alerts
- criminal liability for statements in alerts that may amount to contempt of court
- claims for compensation arising out of misstatements in alerts that could be categorised as misfeasance in Public Office or breach of duty to the taxpayer and others
- claims for compensation arising out of defective administration in respect of misstatements in alerts
- the failure to publish a taxpayer alert may be used by a taxpayer to support a 'reasonably arguable position' on the scheme, and
- any other material legal risk identified as potentially arising from publication of the taxpayer alert.

42. In cases where there is any doubt, it is advisable to seek the advice of the General Counsel Unit in the Legal Services Branch as to whether the legal risk is such that the alert should not be proceeded with.

43. Officers who feel that the circumstances of a particular taxpayer alert give rise to specific legal risks, including any of those listed in paragraph 41, should express those concerns to SIA. In the case of taxpayer alerts from the GST business line, concerns over specific legal risks should be expressed to the GST SES officers overseeing the taxpayer alert in question.

44. This is particularly important where the circumstances of the taxpayer alert pose a risk of publicly identifying either the promoters, or the taxpayers who are participants in the scheme. In appropriate cases the Tax Office may seek further specialist advice.

45. Conversely, where the circumstances of the taxpayer alert do not give rise to the specific legal risks highlighted in paragraph 41 above, then the submission supporting publication of the taxpayer alert must note that the legal risk has been evaluated but is not considered material.

Taxpayer identity

46. Many of the specific legal risks listed in paragraph 41 relate to whether it is reasonably possible for a taxpayer or promoter to be identified from the contents of the taxpayer alert. Taxpayer alerts must not contain any information that might reveal a taxpayer's identity.

47. Law Administration Practice Statement PS LA 2008/4 Publication of written binding advice provides detailed instructions to officers who edit written binding advice for publication. Officers drafting, approving or peer reviewing taxpayer alerts should familiarise themselves with the terms of PS LA 2008/4 as they apply equally in the context of drafting taxpayer alerts.

48. Taxpayer alerts must not contain primary identifying details of any taxpayer (see for example those details listed at PS LA 2008/4, Attachment B, paragraphs 6 to 10, such as taxpayer names, tax file numbers, Australian business numbers, addresses and so on). Similarly, taxpayer alerts must not contain any other facts which may enable identification by secondary means (see PS LA 2008/4, Attachment B, paragraphs 11 to 22). Details which, when combined with other information, may enable someone reading the published taxpayer alert to ascertain the identity of a taxpayer should be removed or replaced with more general or neutral terms.

49. Officers drafting, approving or peer reviewing taxpayer alerts must be mindful of the possibility that a knowledgeable person or a person within a significant community may be able to identify a taxpayer from information contained in a taxpayer alert. PS LA 2008/4, Attachment B, paragraphs 25 to 33 provides guidance on the terms 'knowledgeable person' and 'person within a significant community'.

50. It may also be possible for a taxpayer or a promoter to be identified by comments made by officers responding to queries about a taxpayer alert. Officers need to be particularly careful that they do not identify a taxpayer or promoter in such discussions as the identification, in combination with the taxpayer alert, may give rise to the legal risks identified in paragraph 41 above. For example, linking a taxpayer or promoter with a scheme which is the subject of a taxpayer alert might carry defamatory imputations. This risk can arise even though the words the officer uses are not intended to have such consequences.

51. It is vital that officers minimise these risks. They must exercise skill and care in preparing draft taxpayer alerts, and must show that they have expressly considered the potential legal risks in the submission supporting its publication.

52. The Tax Office may find it necessary at any stage in the taxpayer alert drafting and publication process to seek further advice from the General Counsel Unit in the Legal Services Branch. In particular, further advice may need to be sought in instances where it is reasonably possible that a taxpayer or a promoter may be identified by the publication of a taxpayer alert. In cases such as these the sponsoring business line should notify and consult with SIA and other relevant stakeholders.

Previous or current consideration by the Tax Office

53. The submission supporting publication of a taxpayer alert must outline any relevant previous or current Tax Office consideration of the scheme described in the draft. It is essential that all relevant accessible Tax Office databases and case management systems be examined and that the results of that examination be expressed in the submission. The following checklist provides guidance on matters to be checked and covered by the submission:

- Is the scheme subject to either a private ruling, product ruling or other Tax Office ruling?
- Is the scheme the subject of an application for a ruling (for example, private, product, class and so on) presently under consideration by the Tax Office?
- Is there a published or proposed ATO view in relation to the scheme (for example, a published draft or final public ruling or determination or a proposed draft or final ruling or determination on the Public Rulings Program, an ATO Interpretative Decision, a document listed in paragraph 3 of PS LA 2003/3 Precedential ATO view or on the schedule to that practice statement titled 'Schedule of Documents containing Precedential ATO views', or a Law Administration Practice Statement in the General Administration series)?
- Have any of the specialist Tax Office panels and committees (for example, General Anti-Avoidance Rule Panel, Public Rulings Panels, Priority Technical Issues Committee, Aggressive Tax Planning Steering Committee, Aggressive Tax Planning Risk Review Panel and so on) expressed views about the scheme?
- Has there been any recorded prior consideration by Tax Counsel Network, a business line segment or team, Centre of Expertise, or other specialist area in the Tax Office?
- Have all relevant accessible Tax Office casework systems and databases (including, for example, the Priority Technical Issues Register) been searched? What are the results of those searches?
- Are there any relevant media releases by the Tax Office or Treasury, the Treasurer or the Minister for Revenue and Assistant Treasurer in respect of the scheme?
- Are there any existing QTBs which are relevant to the scheme?
- Are there any other relevant accessible Tax Office records of previous or current consideration of the matter in question?

Potential commercial impact

54. A taxpayer alert may cause commercial damage to the promoter of the scheme or to others associated with the scheme. The submission supporting publication of a taxpayer alert must expressly examine these risks. The submission should consider (so far as the available information allows):

- the number of taxpayers who have entered into the scheme or who are contemplating entering into the scheme, by reference to:
  - the number of existing clients of the promoter
  - where the promoter conducts seminars, the number of potential investors attending these seminars
  - the marketing techniques used
  - the potential reach of those techniques
  - past experience with similar schemes, and
- any other potential commercial impacts on the promoter and others associated with the scheme, which can be identified as likely to arise from the publication of the taxpayer alert. These would include costs in dealing with queries concerning the taxpayer alert, damage to the promoter's reputation and the possible loss of future income.

Alteration or withdrawal of a taxpayer alert

55. As noted earlier, the publication of a taxpayer alert is principally intended to ensure that taxpayers and their advisers are informed that the scheme described is under risk assessment by the Tax Office. The subsequent publication of the ATO view in respect of a published taxpayer alert ensures that taxpayers and their advisers are further informed of the Tax Office's position in respect of that scheme. It is therefore anticipated that the need for a published taxpayer alert to be altered or withdrawn will arise infrequently.

56. Situations may arise where the earlier decision to issue a taxpayer alert is affected by legislative amendment, a court decision or new facts emerging that reveal the scheme is not a risk or the revenue risk posed by the scheme is now perceived to be low. Where a business line decides to propose that a published taxpayer alert should be altered or withdrawn, it must undertake an assessment of the risks anticipated to arise from that action. Those risks would include any likely parliamentary and media interest in the alteration or withdrawal as well as any work likely to be generated for Tax Office call centres or other internal stakeholders. Also to be considered here are the implications that the proposed alteration or withdrawal may have for any published ATO view in respect of the relevant taxpayer alert. The business line must formulate a strategy for treating the risks identified and must also prepare a draft text of the explanation noting the alteration or withdrawal to be posted on the Tax Office's external website.

57. The business line proposing the alteration or withdrawal of a taxpayer alert will recommend in writing that course of action to the First Assistant Commissioner, Aggressive Tax Planning. This recommendation must have SES endorsement from within that business line.

58. Where that recommendation is accepted, the First Assistant Commissioner, Aggressive Tax Planning will authorise the alteration or withdrawal of that taxpayer alert. The withdrawal of a taxpayer alert will not preclude further warnings on the scheme covered by the alert. In rare occasions, a withdrawn alert may subsequently be re-issued, if circumstances change.

59. The Aggressive Tax Planning team in the Office of the Commissioner will work with the Law and Practice business line to ensure that the alteration or withdrawal (and explanation) is noted on ATOlaw, the ATO Legal Database and the external website and referenced to the taxpayer alert to which it relates.

60. SIA will provide advice and assistance to business lines contemplating the alteration or withdrawal of a taxpayer alert (email the Taxpayer alerts outlook email address).

Subject references	aggressive tax planning call centres QTBs media releases question time briefs taxpayer alerts taxpayer alerts - alteration and withdrawal taxpayer alerts - preparation, approval and publication
Legislative references	ITAA 1936 8 FBTAA 1986 3 TAA 1953 3A TAA 1953 365-5 SISA 1993 6(1)(e) SISA 1993 6(1)(f) SISA 1993 43 Superannuation Contributions Tax (Assessment and Collection) Act 1997 30 Privacy Act 1988 Secrecy provisions listed in Appendixes A & B of corporate management practice statement PS CM 2004/07 (G)
Related practice statements	PS LA1998/1, PS LA 2008/4, PS LA 2001/15, PS LA 2003/3, PS LA 2003/10
Other references	SIA Home Page Media Relations contact list Guide to Question Time Briefs Parliamentary Services contact list PS CM 2004/07 (G) – 'Secrecy and privacy obligations of Tax Office employees' Legal Services Branch contact list
File references	05/11150
Amendment history	**28 February 2008:** Updated as a result of *Report on Aspects of Income Tax Self Assessment* **8 February 2008:** Contact details updated **23 November 2007:** Update paragraph 11 to reflect new procedure and remove incorrect link **1 July 2006:** Update reference to subsection 63 of the TAA to subsection 365-5 of Schedule 1 to the TAA 28
Date issued	19 August 2005
Date of effect	19 August 2005
Other Business Lines consulted	OCOM, PMD, OCTC, TCN, LB&I, PTax, SB, SNC, Superannuation, GST, Excise, ATO Relations, Operations