PS LA 2005/20 - Signature requirements for approved virtual forms, which are forms which are to be lodged electronically or given by telephone

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Practice Statement Law Administration

PS LA 2005/20

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FOI status: may be released

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 Tax office staff unless doing so creates unintended consequences. Where this occurs Tax Office staff must follow their Business Line's escalation process.

This practice statement must be read in conjunction with Law Administration Practice Statement PS LA 2005/19.

SUBJECT:	**Signature requirements for approved virtual forms, which are forms which are to be lodged electronically or given by telephone**
PURPOSE:	**To explain:** • **the signature requirements and the process for approving electronic and telephone signatures in approved virtual forms, and** • **basic administrative support arrangements to be followed once a signature is approved.**

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STATEMENT

1. This practice statement sets out:

- the signature requirements for making declarations in approved virtual forms which are lodged electronically with the Commissioner or given to the Commissioner by telephone, and
- the process which ATO staff must follow when approving an electronic signature or a telephone signature as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).

2. The signature requirements for forms that are sent to the ATO by facsimile transmission are not dealt with by this practice statement because they are not considered to be transmitted to the Commissioner in an electronic format approved by the Commissioner.

3. Giving documents by facsimile transmission is considered by the Commissioner to be a way of giving the form in paper form for the purposes of subsections 388-75(1) and 388-75(2) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

4. The signature requirements for forms that are sent to the ATO as e-mail attachments are not dealt with by this practice statement because they are not considered to be transmitted to the Commissioner in an electronic format approved by the Commissioner.

Electronic and telephone lodgment of 'approved forms' – declaration and signature requirements

5. The meaning of the term approved form as used in this practice statement is explained in Law Administration Practice Statement PS LA 2005/19 Approved forms (PS LA 2005/19). Forms that are lodged electronically or given by telephone are referred to as virtual forms in PS LA 2005/19.

6. An approved form that is lodged with or given to the Commissioner must contain a declaration from the entity lodging or giving the form that any information in the form is true and correct: sections 388-60 and 388-65 of Schedule 1 to the TAA.

7. Where the form is lodged electronically, any required signature must be an electronic signature, under subsection 388-75(3) of Schedule 1 to the TAA.

8. Similarly, where the form is given by telephone, any required signature must be a telephone signature, under subsection 388-75(4) of Schedule 1 to the TAA.

9. Only the Commissioner, a Second Commissioner or an SES officer holding the appropriate delegation from the Commissioner (the approving officers) may approve the electronic or telephone signature requirements for an approved form. The approving officer must approve a signature that:
   - is adequate to authenticate the identity of the entity signing the declaration in a form, and
   - minimises the risk that the declarations made can be repudiated or denied by the entity signing the declaration in a form.

10. The officer approving the form must ensure, if the form may be given electronically, an electronic signature is approved so that it applies to any declaration in the form, and if the form may be given by telephone, a telephone signature is approved so that it applies to any declaration in the form.

11. The approving officer for an electronic signature should ensure that the approved form includes the declaration details for every signed declaration required by the form.

12. Similar requirements must be followed when approving a telephone signature. The ATO's interactive voice recognition (IVR) system will outline the appropriate declaration to which the preparer will respond either orally or by use of the telephone keypad.

13. Approving officers must record in writing the electronic or telephone signature and their approval of the signature requirements. Standard forms of instruments of approval are at Attachments A and B for electronic and telephone signatures respectively.

14. Where an instrument of approval is created for an electronic signature for a document that can be lodged electronically the instrument of approval must be held as ancillary material to the instruments of approval for the related approved forms in accordance with paragraph 20 of PS LA 2005/19.

15. Where an instrument of approval is created for a telephone signature for a document that can be lodged by telephone the instrument of approval must be held as ancillary material to the instruments of approval for the related approved forms in accordance with paragraph 21 of PS LA 2005/19.

16. A register for instruments of approval for electronic signatures is not required because these form part of the ancillary material to the instruments of approval for the related approved forms. As stated in paragraph 24 of PS LA 2005/19, these arrangements are not part of the approval process for electronic and telephone signatures.

17. Electronic and telephone signatures will be approved on the basis of business practicalities and system capabilities such as developments in lodgment technology.

18. A number of Acts administered by the Commissioner have electronic signature requirements that are not covered by the signature provisions in section 388-75 of Schedule 1 to the TAA or the definition of electronic signature in subsection 995-1(1) of the ITAA 1997. In approving electronic signatures for provisions in those Acts, approving officers must follow the process outlined in this practice statement.

19. The tables in Attachment C list some of the different electronic and telephone signatures which have previously been approved for use with these forms of transmission.

EXPLANATION

Signed declarations in approved forms

20. Where a form is required to be given to the Commissioner in the approved form, taxation law requires a signed declaration, including that any information in the form is true and correct (sections 388-60 and 388-65 and 388-75 of Schedule 1 to the TAA). A statement that is false or misleading can result in an administrative penalty under subsection 284-75(1) of Schedule 1 to the TAA, or constitute an offence under section 8K or section 8N of the TAA.

21. Taxation forms are generally required to be given in the approved form. Section 388-50 of Schedule 1 to the TAA sets out the requirements for approved forms. PS LA 2005/19 explains the procedures for approval of approved forms.

22. If an agent is providing information in an approved form on behalf of another entity, section 388-70 of Schedule 1 to the TAA requires the agent to make a declaration to the Commissioner about the form being given. The declaration details must state that:

- the form has been prepared in accordance with the information supplied by the other entity;
- the agent has received a declaration from the other entity stating that the information provided to the agent is true and correct, and
- the agent is authorised to give the form to the Commissioner.

Electronic and telephone signatures on approved forms

23. Under subsection 388-75(3) of Schedule 1 to the TAA, signed declarations in approved forms that are given electronically must be signed with the entity's electronic signature. The required signed declaration may be different or additional to a declaration under section 388-60 or 388-70.

24. Similarly, under subsection 388-75(4) of Schedule 1 to the TAA approved forms that are given by telephone must be signed with the entity's telephone signature.

25. The term 'electronic signature' of an entity is defined in subsection 995-1(1) of the ITAA 1997 as 'a unique identification of the entity in electronic form that is approved by the Commissioner'. This gives the Commissioner a broad discretion to determine the appropriate signature to be used on forms that are transmitted electronically to the ATO. An entity may be required by the ATO to have more than one electronic signature.

26. Some electronic signatures are complex digital identifiers, such as the digital certificates issued to businesses that lodge business activity statements over the Internet using the electronic commerce interface (ECI) system. Others can be as simple as a personal identification number (PIN). For forms lodged by a registered agent using the electronic lodgment service (ELS) the electronic signature is a combination of the registered agent's registration number and a unique ELS approved number.

27. The term 'telephone signature' of an entity is also defined in the same broad way in subsection 995-1(1) of the ITAA 1997 as 'a unique identification of the entity that can be given by telephone and that is approved by the Commissioner'.

Approving electronic and telephone signatures

28. The authority to approve an electronic or telephone signature rests with the Commissioner, a Second Commissioner or SES officer holding the appropriate delegation or authorisation from the Commissioner (see Taxation Authorisations Guidelines).

29. Whenever a form may be lodged electronically there must be an applicable electronic signature for any signed declarations required in it. Whenever a form may be given by telephone, there must be an applicable telephone signature for any signed declarations required in it. The approved form may not be approved unless the approval of any required electronic signature and telephone signature has been verified (for one that already applies) or obtained (if none otherwise applies).

30. In each instance the officer approving the signature requirements must be satisfied that the identity of the entity giving the approved form can be authenticated, and that statements made by that entity cannot be repudiated. This ensures the integrity of the data and prevents an entity who has given an approved form from denying it was theirs. An electronic signature should be

linked to the signatory and to no other entity, and within the control of the signatory and no other entity.

ATTACHMENT A

INSTRUMENT OF APPROVAL OF ELECTRONIC SIGNATURE

In accordance with subsection 388-75(3) of Schedule 1 to the *Taxation Administration Act 1953* and the definition of 'electronic signature' in subsection 995-1(1) of the *Income Tax Assessment Act 1997*, I hereby approve the following form of electronic signature for the following purposes:

Form of Electronic Signature	**Purpose (including identifying details of the related approved form)**

Signed this .....day of 20

Name: …….....

Position Title: …….....

Position Number: …….....

Signature:

Delegate of the Commissioner of Taxation.

ATTACHMENT B

INSTRUMENT OF APPROVAL OF TELEPHONE SIGNATURE

In accordance with subsection 388-75(4) of Schedule 1 to the *Taxation Administration Act 1953* and the definition of 'telephone signature' in subsection 995-1(1) of the *Income Tax Assessment Act 1997*, I hereby approve the following form of telephone signature for the following purposes:

Form of Telephone Signature	**Purpose (including identifying details of the related approved form)**

Signed this .....day of 20

Name: …….....

Position Title: …….....

Position Number: …….....

Signature:

Delegate of the Commissioner of Taxation.

ATTACHMENT C

Table A – Forms of electronic signatures

Form of Electronic Signature	Purpose
Digital signature produced by use of a private authentication key that is associated with a Digital Certificate that has been issued by the ATO Organisational Certificate Authority (OCA) to a Certificate Holder on behalf of an entity.	For a Certificate Holder to sign a form; where the form is to be lodged with the ATO via the ATO Electronic Commerce Interface and other applications such as the ABR that accept ATO issued Keys and Certificates.
Digital signature produced by use of a private authentication key that is associated with a Digital Certificate that has been issued by the ATO OCA to a Certificate Holder on behalf of an entity.	For a Certificate Holder to sign a form; where the form is to be lodged with the ATO via the ATO Portals.
Digital signature produced by use of 'one time only use' keys generated by e-tax.	For signing an individual income tax return, where the income tax return is to be lodged with the ATO via e-tax.
Digital signature produced by a form preparer using his or her registered agent registration number in combination with the ELS registration/approval of the transmitter.	For signing a declaration in an approved form that is lodged by a registered agent via ELS on the Internet Protocol (IP) networks.
Electronic signature placed by the client on the Dealing Electronically On-line Registration Form.	To complete a registration form to receive ATO Public Key Infrastructure (PKI) digital keys and certificates, the Electronic Commerce Interface (ECI) software.
Digital signature produced by use of AUSkey which is a single key to access government online services.	AUSkey® is used to login to a range of business to government websites and to electronically sign forms accepted under the Standard Business Reporting software.

Table B – Forms of telephone signatures

Form of Telephone Signature	Purpose
Telephone signature produced by the client by interacting with the ATO IVR and use of a tax file number in combination with a telephone identification number and the job number of the previous year's notice of assessment.	For lodging simplified tax returns by telephone.
Telephone signature produced by the client by interacting with the ATO IVR and use of a tax file number in combination with date of birth and postal code.	For lodging a claim for baby bonus benefits by telephone.
Telephone signature produced by the client by interacting with the ATO IVR and use of a tax file number in combination with date of birth, postal code and gender.	For lodging an application for refund of imputation credits by telephone.

Amendment history

Date of amendment	Part	Comment
14 December 2011	Attachement C Table A	Remove “enables” from the last line of last box
12 November 2010	Opening statements	Tax Office replaced by ATO. Advice that this practice statement should be read in conjunction with PS LA 2005/19.
	Subject and paragraph 1	Addition of the word ‘virtual’ for consistency. Reference to Attachment A deleted.
	Paragraphs 2 to 4	Explanation that facsimile copies of paper forms and those sent as attachments via e-mail are not subject to this practice statement as they are not considered to be lodged electronically.
	Various	Changed the word ‘document’ for ‘form’ for consistency.
	Paragraph 20	Clarifying requirements for a declaration to be included on an approved form given to the Commissioner.
	Paragraph 30	Additional wording to clarify the requirement that an electronic signature must be able to linked to the signatory and no other.
	Attachment A	Deleted, subsequent Attachments renumbered.
	Attachment C	Additional forms of electronic signatures added.
	Legislative references	Unnecessary legislative references removed and other references added
29 September 2006	Legislative references	Reference to section 37 of the *A New Tax System (Australian Business Number) Act 1999* removed (now repealed).
4 July 2006	Various Attachments A and D	References to Electronic Lodgment System corrected to Electronic Lodgment Service Update reference to Auspac to Internet Protocol Networks. Remove reference to BAS agent D.

Subject references	approved form declaration electronic signature telephone signature
Legislative references	ITAA 1997 995-1(1) TAA 1953 8K TAA 1953 8N TAA 1953 Sch 1 284-75(1) TAA 1953 Sch 1 388-50 TAA 1953 Sch 1 388-60 TAA 1953 Sch 1 388-65 TAA 1953 Sch 1 388-70 TAA 1953 Sch 1 388-75(2) TAA 1953 Sch 1 388-75(3) TAA 1953 Sch 1 388-75(4)
Related public rulings	TR 2005/9
Related practice statements	PS LA 2005/19 Approved forms
Other references	List of approved forms Taxation Authorisations Guidelines (links available internally only)
File references	2004/11055 1-1UUYVBW
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