

# ***PS LA 2013/4 - The ATO's role in the tax law design process***

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⚠ This document has changed over time. This version was published on *27 March 2025*



# Law Administration Practice Statement

**PS LA 2013/4**

*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.*

**SUBJECT:** The ATO's role in the tax law design process

**PURPOSE:** To explain the:

- **ATO's role in the law design of Australia's tax system and some aspects of the superannuation, foreign investment, and registry systems**
- **participation of ATO personnel in tax law design, specifically as it relates to the administration of and how draft law might operate once enacted.**

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## **STATEMENT**

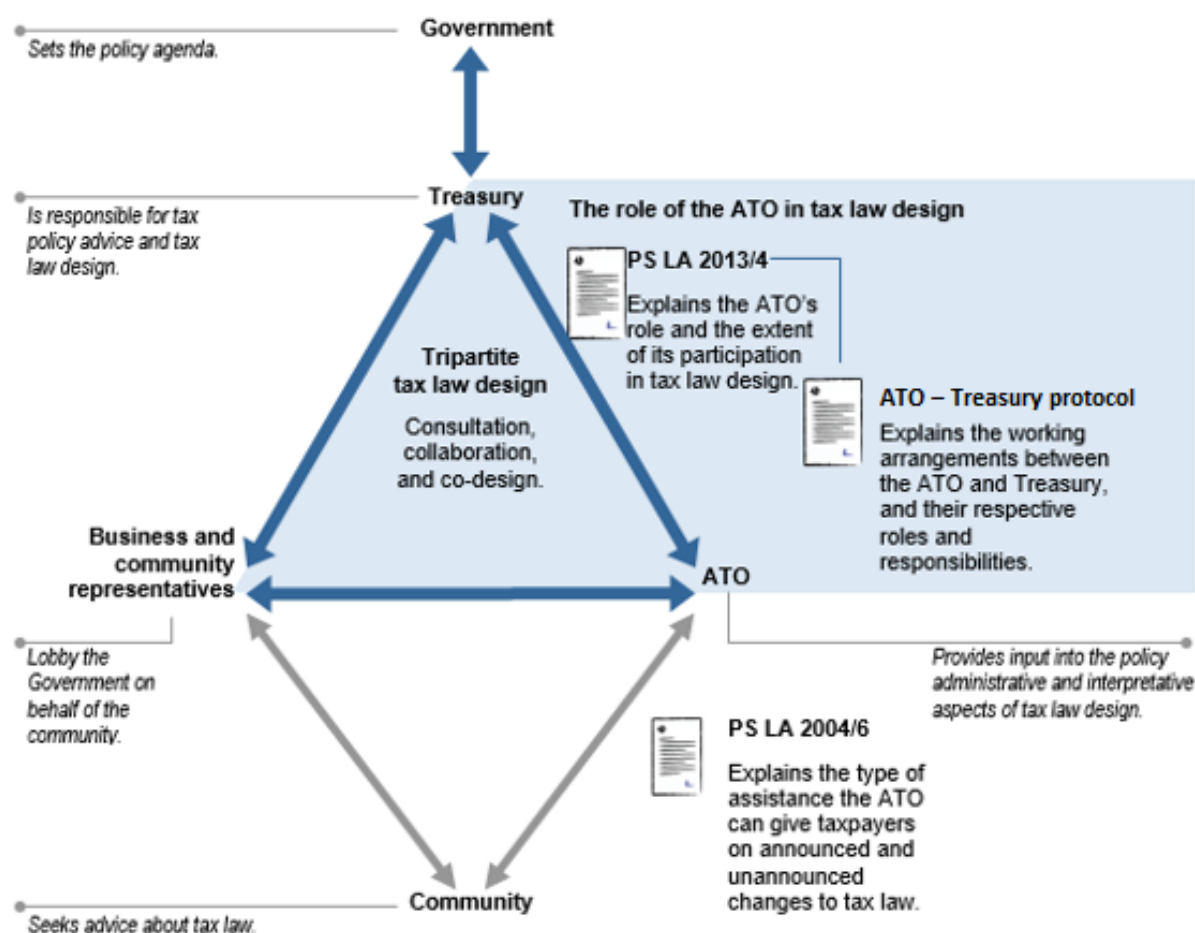
### **Development of the modern approach to tax law design**

1. Since 2002, the Treasury has had responsibility for advising relevant government ministers on both tax policy and the design of tax laws, while the Office of Parliamentary Counsel (OPC) has responsibility for drafting legislation. We have responsibility for administering the tax law and bring our experience with that administration to assist the Treasury with the development of tax policy and law.
2. A high level of integration between the Treasury and ATO throughout policy and law development ensures that new laws can be administered in line with policy intent. An optimal law design process involves joint cooperation and collaboration between the Treasury, the ATO and the community. The level and type of community involvement

in tax law design is tailored to each measure, with public or stakeholder consultation a common approach where appropriate.

3. This Practice Statement provides guidance for ATO personnel<sup>1</sup> participating in tax law design. Following the completion of the tax law design process, once draft law has been enacted, consultation and collaboration with the Treasury and the private sector continues, usually through different forums and representatives, such as the National Tax Liaison Group (NTLG).

Diagram 1: Tax law design in context



### The ATO – Treasury Protocol

4. The ATO – Treasury Protocol (Protocol) describes each agency's roles and responsibilities in relation to the various aspects of the tax law design process and data sharing arrangements. The Protocol provides an agreed framework for working arrangements between us and the Treasury for delivering advice to government on tax policy and on the design and development of tax law. The Protocol was revised and updated in December 2023.
5. The Protocol seeks to ensure that our administrative, compliance and interpretative experience is considered as part of the policy and law design process, and that there is a high level of integration across the policy, law and administrative aspects of change to the laws that we administer.
6. ATO personnel working in tax law design teams must adhere to the Protocol.
7. For more information, see [ATO – Treasury Protocol](#).

<sup>1</sup> ATO personnel includes staff, employees and officers. ATO personnel also includes contractors where their agreement or contract states that they will comply with ATO policies.

## **Our role in tax law design**

8. Within the framework set out in the Protocol, our role in tax law design is to provide high-quality input into the development of tax policy and law. We do this by contributing our views and experience, particularly in relation to the administrative impacts, risks and interpretative issues of proposed changes to the law. This recognises that tax policy and law design should take potential administrative issues into account.
9. In seeking our input on interpretative aspects of tax law, the Treasury provides us with the intended policy objective of a measure and we then provide our views as to whether the draft law achieves that objective. Ultimately, the OPC must be satisfied that draft law is legally effective to implement government policy.
10. Our input into the process may include commenting on drafting instructions, draft law and explanatory memorandums, and may occasionally involve direct discussions with the OPC, where appropriate. Our input into tax law design extends to the passage of the law through parliament.
11. We provide assurance on the final version of draft law before it is introduced into parliament so that the bill, as drafted, can be administered and interpreted in accordance with the underlying policy intent.

## **ATO personnel participation in tax law design**

12. We are fully supportive of and committed to tax law design whenever it occurs, as well as public and stakeholder consultation processes that are led by the Treasury on new tax policy and law proposals.
13. ATO personnel involved in tax law design will discuss issues throughout the design and the implementation of the new tax law to best ensure that the change to the law will operate as intended.
14. There are established processes in place to provide the Treasury with our views on the administration, compliance cost and revenue consequences of new tax policy and law at all stages of the tax law design process.<sup>2</sup> Our input into tax law design is developed through discussions, meetings and workshops of a core design team of relevant stakeholders and subject matter experts to identify any administrative risks or issues arising from the draft law. We provide the ATO view through comments to the Treasury on drafting instructions, draft law and explanatory memorandums.
15. All members of tax law design teams and parties that are involved in any consultative process should be aware that their views collectively establish an ATO perspective on the potential application of the draft law. Open discussions about interpretative issues during the law design process allow stakeholders to put forward their perspectives, which can influence our views about how the law is likely to operate. There will be some circumstances where our view about how the law as enacted operates will be different to the views about how the law is likely to operate on introduction to parliament. For example, this may arise where:
  - amendments to the law are made during the passage of the bill through parliament
  - court decisions that have a material impact on the interpretation of the enacted law are handed down following the introduction of the bill, or
  - there is a material difference in the facts of a case being considered under the enacted law relative to the circumstances that were contemplated by us when offering preliminary views as part of the tax law design process.

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<sup>2</sup> Chief Executive Instructions [Engaging across the policy lifecycle](#) and [Program and project management](#) (links available internally only).

16. It is only after the law is enacted that we can provide binding advice on our interpretation of the law.
17. When providing input on interpretative issues, it is important that ATO personnel consider how the law can be designed to achieve the policy intent as naturally as possible for taxpayers and the community.
18. ATO personnel participating in the tax law design process should:
  - seek to ensure that the law and explanatory materials clearly state the policy intent or purpose of the law change
  - consider how the proposed change will interact with other parts of the tax law, and
  - consider the application date of the law change, our ability to implement by the start date and the need for any transitional provisions.
19. If preliminary views are expressed between us and private sector representatives, our representatives must ensure that the Treasury is aware of the views, to ensure that the Treasury can consider the views and instruct OPC appropriately.
20. Issues identified with tax laws that have been introduced into parliament should be communicated to the Treasury at the earliest possible time.
21. It is expected that ATO personnel and all other parties taking part in the law design process will be open and transparent to ensure the quality of the changes to the tax law.

#### **Dealings with taxpayers and their representatives outside of the tax law design process**

22. ATO personnel dealings with private sector representatives in a tax law design process should be separate from dealings with taxpayers and their representatives in relation to unenacted tax laws. ATO personnel providing assistance to taxpayers and their representatives in relation to announced or unannounced changes to the tax law are required to follow Law Administration Practice Statement PS LA 2004/6 *Giving advice on proposed changes to the tax law before royal assent or registration on the Federal Register of Legislation*.
23. In particular, PS LA 2004/6 prohibits ATO personnel from providing indicative interpretative advice on tax law prior to it receiving royal assent or prior to registration for regulations. Any such advice may be misleading in the event that the law or regulations change prior to royal assent or registration.<sup>3</sup>
24. However, PS LA 2004/6 states that ATO personnel should gain a clear understanding of any issues or concerns raised by taxpayers or taxpayer representatives in relation to unenacted tax law.<sup>4</sup> While recognising the importance of not providing indicative interpretative advice to taxpayers or taxpayer representatives in this process, an open discussion about these issues or concerns, as well as possible responses to them, should inform the tax law design process.

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<sup>3</sup> Paragraph 2 of PS LA 2004/6.

<sup>4</sup> Paragraph 3 of PS LA 2004/6.

**Clarifying your role in the process**

25. If you are unsure about your role in the process, you should seek guidance from your manager or follow your business line's escalation process.

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**Business line:** Policy, Analysis and Legislation

## Amendment history

27 March 2025

Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.
Footnotes 2, 3 and 5	Removed.
Contact officer	Contact updated.
Throughout	'Treasury/ATO Protocol' updated to 'ATO – Treasury Protocol'.
Diagram 1	Caption and alt text added.
Throughout	Content revised and rewritten to be more succinct and clear.

10 April 2014

Part	Comment
Footnote 4	Updated 'PS CM 2003/05' to CEI 2014/02/03'.
Contact details	Updated.

## References

Related Practice Statements	<a href="#">PS LA 2004/6</a>
Other references	<a href="#">ATO – Treasury Protocol</a> Chief Executive Instruction <a href="#">Engaging across the policy lifecycle CEI</a> (link available internally only) Chief Executive Instruction <a href="#">Program and project management CEI</a> (link available internally only)
File references	1-2JVGCK2; 1-15WEDRX2

## ATO references

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