

## **The Australian Tax Office is not a legal entity**

The point is often raised that the Australian Tax Office does not have legal existence and therefore cannot impose taxes. The contention seems to originate in a submission in [Moeliker v Chapman \[2000\] HCATrans 242](#), in which it was agreed that the Australian Tax Office does not have legal personality. This point was sufficient for many theorists to indicate that taxes were voluntary.

[https://freemandelusion.com/wp-content/uploads/2020/08/moeliker-v-chapman-b8\\_2000-2000-hcatrans-242-17-may-2000.pdf](https://freemandelusion.com/wp-content/uploads/2020/08/moeliker-v-chapman-b8_2000-2000-hcatrans-242-17-may-2000.pdf)

But that is as far as the contention could proceed as it was the Commissioner of Taxation that brought proceedings, and not the Australian Tax Office.

The matter was adjourned and the final judgment was handed down in a later decision. The submissions were identical to a series of other cases, also brought by [Wayne Levick and the Institute of Taxation Research](#), represented by [David Fitzgibbon](#), so they were delivered collectively in *Dooney v Henry*; *Dooney v Chapman*; *Morgillo v Ross de Vere*; *Morgillo v Chapman*; *Gorshkov v Key*; *Gorshkov v Chapman*; *Dive v Chapman*; *Dive v Key*; *Gair v Chapman*; *Moeliker v Henry*; *Moeliker v Chapman* (2000) HCA 44.

The series judgment title is [Dooney v Henry \[2000\] HCA 44](#) in which it was stated (at 6):

*“There then follows an allegation, purportedly supported by a number of particulars, which need not be repeated, that the Australian Taxation Office is a body without a legal existence. This last allegation, and the misconceived claim for relief in respect of it (prayer 5), can be immediately disposed of. The Australian Taxation Office is not a legal personality, the applicant does not contend that it is, and whether the Australian Taxation Office is, or is not a legal personality, is not a matter of the slightest relevance to any issue or efficacious remedy that might be available to the respondent.”*

<https://freemandelusion.com/wp-content/uploads/2020/08/dooney-v-henry-2000-hca-44.pdf>

[Wayne Levick and the Institute of Taxation Research](#) were in dozens of cases ordered to pay the costs of the respondent. The Federal Court also declared that they engaged in misleading and deceptive conduct contravening the Trade Practices Act 1974, by making representations that there are arguments available to avoid payment of taxes by using their services.

[Deputy Commissioner Of Taxation v Cutts \(No.4\) \[2019\] FCCA 2866](#) (From 92):

*“Mr Cutts asserts that as the Australian Taxation Office (“ATO”) is not a legal and lawful entity, it has no legal rights. This ground is similar to ground 6 of the Notice of Objection before the Registrar which sought supply of “certified copies of evidence that establish the Australian Taxation Office giving the Australian Taxation Office the right to lawfully exist”, and is dealt with at [44]-[50] above.*

*Mr Cutts also asserts: Cutts 2017 Affidavit at [2], that the Commonwealth of Australia is listed on the United States Securities and Exchange Commission as a “for-profit” organisation and likewise all government departments and agencies are “for profit”. It is not apparent what the point of*

*this assertion is, and it suffices to observe that even if it is correct, it does not affect the statutory regime in Australia in relation to bankruptcy or the task of this Court on this application.*

*Mr Cutts asserts that, if he owes tax, he must have entered into a contract to pay the ATO tax, but that he is not aware of his doing so, and if so he wished to stop. As is otherwise evident liability for tax is ultimately imposed pursuant statute not contract, and this assertion does not affect this Court's role on this application.*

*In Webb v Deputy Commissioner of Taxation [2017] FCA 1520 ("Webb Appeal") the Federal Court dismissed an appeal against the judgment of this Court in Webb FCCA whereby the applicant had raised the same grounds as Mr Cutts. In dispensing with the ground this Court stated as follows in Webb FCCA at [59]-[64] per Judge Wilson:*

*"This argument I accept. But the argument is irrelevant to this case because the petitioning creditor was the Deputy Commissioner of Taxation and not the ATO.*

*The status of the ATO as a legal entity has been the subject of a number of authoritative pronouncements. In Levick, Hill J said that the ATO does not exist for legal purposes.*

*In the High Court, Callinan J held in Dooney that the ATO is not a legal personality.*

*In the Supreme Court of South Australia, David J in Daniels held that the ATO was not a legal entity. ...*

*To my mind, this ground missed the point because the current party with statutory authority to sue in fact brought the proceeding in the County Court. That party also petitioned this court for the sequestration order of Mr Webb's estate. The status of the ATO as a separate legal entity had nothing to do with this case."*

<https://freemandelusion.com/wp-content/uploads/2020/06/deputy-commissioner-of-taxation-v-cutts-no.4-2019-fcca-2866.pdf>



**Robert R. Sudy** (author) Website: [Freeman Delusion: The Organised Pseudolegal Commercial Argument in Australia](https://freemandelusion.com) Email: [robertsudy@freemandelusion.com](mailto:robertsudy@freemandelusion.com) \* Like the page on [Facebook](#) Public group [Australian Pseudolaw](#) \* Follow me on [Twitter](#) \* Subscribe [on YouTube](#).