

PS LA 1999/3 - Tax laws claimed to be invalid

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ATO Practice Statement

Law Administration

PS LA 1999/3

This practice statement is withdrawn from 6 September 2004 and replaced by
Law Administration Practice Statement PS LA 2004/10

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 ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: Tax laws claimed to be invalid

PURPOSE: How to reply to taxpayers who claim that they will not comply with the tax laws because the laws are invalid on constitutional grounds

STATEMENT

1. A view is being aggressively marketed by promoters that there is no law to be upheld in Australia and that paying taxes is therefore optional. Complex arguments are put forward to support this view, based on the notion that Australia's entire political and judicial system has had no legal validity since about 1920, and the Australian Constitution is therefore invalid, as are those of the states.
2. The essential points for staff to make in response to such a claim are:
 - It is not the function of the ATO to enter into debate or give advice about the Constitution or the general legal and political system.
 - ATO has had authoritative legal advice that nothing in the arguments being put forward raises any doubt about the validity of Australia's taxation laws.
 - This means that taxpayers who refuse to comply with taxation laws risk prosecution and imposition of penalties and interest.
 - Submissions along the lines of those being put forward have already been dismissed as being unarguable by various courts, including the High Court of Australia (*Joosse & Anor v Australian Securities and Investment Commission* [1998] 159 ALR 260 (21 December 1998)).
3. Given that claims of this nature have been emphatically rejected by the courts, it is not appropriate that staff spend time and other resources attempting to formulate a detailed response. At most there should merely be a short letter of rejection, adapted to the circumstances. An example appears below.

I refer to your letter of in which you allege that taxation laws are invalid .

Arguments along the lines set out in your letter have recently been emphatically rejected by the High Court of Australia and by the Supreme Court of Queensland Court of Appeal.

The Australian Taxation Office will continue to exercise its powers to ensure that taxpayers comply with their taxation obligations. This means that taxpayers who refuse to comply with the taxation laws, on whatever grounds, risk being prosecuted if they fail to lodge tax returns and those who refuse to pay their outstanding taxes risk being made bankrupt.

EXPLANATION

4. The claims may be encountered in a wide range of situations including requests for proof that laws are valid, Freedom of Information requests, personal enquiries and objection letters. All should be dealt with summarily, as indicated above.
5. There is a nonsensical circularity to the submissions in that they deny the legal existence of the ATO (and the courts and the legal system), yet seek an ATO response such as that we consider an objection lodged under a tax statute.
6. In even weirder vein, promoters have threatened to prosecute staff and others (notably judges) involved in attempting to uphold our laws. To date there has been nothing more than threats, and it appears highly unlikely than anything along these lines could even be initiated. However, if any attempt is made to commence legal action against staff, details should be immediately conveyed to the ATO Solicitor, OCTC in National Office, so that the staff member can be fully supported. As set out in the Employees' Handbook, ATO will fully support staff who have acted reasonably and responsibly in carrying out their duties, including paying the officer's costs of defending the action, if any.

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