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## Editorial for the Inaugural Issue

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## Editorial for the Inaugural Issue

### **Abstract**

[Extract] The publication of this inaugural issue of the Revenue Law Journal comes at an interesting stage in the development of Australian tax law. Australians are learning to live with capital gains tax and fringe benefits tax, though there are still many unsolved problems in these areas. Whatever their advantages creating equity or fairness, both taxes bring disadvantages: they incentive to save and invest, they discourage business activity, and they increase paperwork and red tape.

## EDITORIAL FOR THE INAUGURAL ISSUE

The publication of this inaugural issue of the *Revenue Law Journal* comes at an interesting stage in the development of Australian tax law. Australians are learning to live with capital gains tax and fringe benefits tax, though there are still many unsolved problems in these areas. Whatever their advantages in creating equity or fairness, both taxes bring disadvantages: they reduce the incentive to save and invest, they discourage business activity, and they increase paperwork and red tape.

Also, the courts are tending to move away from the literal approach to the interpretation of revenue legislation and to adopt a purposive approach (*Cooper Brookes (Wollongong) Pty Ltd v FCT* (1981) 147 CLR 297). It is to be hoped that this tendency will not be allowed to go too far. In modern times, when complex concepts lead to complex legislation, the ideal of predictability is all too easily discarded. Recall the words of Lord Diplock in *Black-Clawson International Ltd v Papierwerke Waldhof Aschaffenburg AG* [1975] AC 591, 638:

The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it. Where those consequences are regulated by a statute the source of that knowledge is what the statute says. In construing it the court must give effect to what the words of the statute would be reasonably understood to mean by those whose conduct it regulates.

There are dangers in denying to taxpayers that right to arrange their affairs in such a way as to minimise the amount of tax that the Income Tax Assessment Act requires them to pay. Moral indignation has its limits. It has been well said that: "The quest, undertaken soberly and moderately, for ways of paring the tax bill, does not involve moral obloquy in any form." (Molloy, *Estate Planning* (1970))

Under an ideal tax system, any taxpayer should be able to find out, with a reasonable degree of certainty, what the revenue consequences of any transaction which he or she proposes to enter into will be. Those responsible for the drafting of revenue statutes could derive much help from the work which is now being done in relation to the use of plain English in legal drafting (see, eg, the Law Reform Commission of Victoria, Report No 9, *Plain English and the Law*). Australia's taxation and corporate legislation is excessively complex and wordy. Much lip-service has been paid to this problem, and there have been defences of drafting policies by the Commonwealth Attorney-General. In 1988, Mr Ralph Jacobi, a tenacious tax-reforming federal MHR of the 1970s and 1980s, and then Mr Robert Tickner MHR, asked the Attorney-General why the main Australian tax statute contained about one million words, while that of Hong Kong, for example,

contained only about 60,000. Why, they added a trifle ingenuously, did Australia need about fifteen times as many words as Hong Kong in its tax laws? The Attorney-General's answer was predictable enough, even patronising. Hong Kong tax laws are apparently simple ones. They do not purport to cover the same matters or perform the same functions as the Australian statute. So the two cannot fairly be compared. Well, comparisons there will be, many of them scrupulously fair and many of them in the pages of this journal, the editors hope. If Hong Kong's top personal tax rate of 17.5% is a symptom of its simplicity, then there is much good in it.

The tax avoidance boom contributed to the prolixity of our tax laws. Lawyers, especially judges, by focusing on narrow literal meanings, encouraged drafters to try and cover every gap and contingency. That process is doomed. More words mean more potential loopholes and scope for literal-minded escapees, and even less understanding of the tax laws by taxpayers. Clear, simple tax laws that express sound tax policy, and that are interpreted fairly by our courts, are the goal. If simplicity, fairness and economic rationality are the hallmarks of a good tax regime, we do not measure up particularly well. By constructive analysis and criticism, we hope that this journal can move us a little closer to good tax regimes in Australia and elsewhere in the Pacific region.

It is with great pleasure that the Taxation and Corporate Research Centre at Bond University, in association with the Federation Press, Sydney, launch this inaugural issue of the *Revenue Law Journal*.

Jim Corkery  
George Hinde

*General Editors*  
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