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Editorial

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Editorial

Abstract

[Extract] Our theme in this volume is taxpayers' rights around the world. To our knowledge there has been no such comprehensive coverage of the topic in English. The articles provide fascinating insights into the different issues that are claiming the spotlight around the world.

Keywords

taxpayers rights, tax, law

EDITORIAL

Taxpayers' rights

Our theme in this volume is taxpayers' rights around the world. To our knowledge, there has been no such comprehensive coverage of the topic in English. The articles provide fascinating insights into the different issues that are claiming the spotlight around the world. Predictably, many issues are the same, although the treatments differ.

The inspiration for comparative analysis springs from the question, "Why does your system treat this issue differently from ours?" We can make great progress from a pooling of ideas, if only we dare to listen.

Yet, there is seldom the same internationalism in revenue law as there is in many other areas of the law. Perhaps it is because revenue law has such a distinctly domestic focus. Even international tax is seen very much from the perspective of the resident of the particular country. The rules in other jurisdictions are perceived as being too complex to investigate in any detail. The common assertion that a person can only possibly be familiar with the tax laws of one jurisdiction, and even then imperfectly, may have led us to give up too quickly on becoming acquainted with the general principles of tax law that operate in other jurisdictions.

This volume offers a comparative analysis of taxpayers' rights. What is taken for granted in one system may be a novel and exciting proposal within another. Take the Swedish system of advance rulings. It was established in 1951 and the rulings are given by an independent body, with the status of a court. In some other jurisdictions, rulings are only available in respect of a limited range of transactions or persons. For example, private tax rulings in the Netherlands are only applicable to international enterprises. In all but the Swedish system, the rulings are given by the revenue authorities. Certainly, in Australia, this has led to increased tension within the system, as taxpayers view as biased any ruling issued by the taxation authorities. Perhaps the cost of creating an

independent body to issue rulings would be far outweighed by the reduction in dispute settlement costs. Taxpayers would likely accept rulings issued by an independent authority as a true representation of the law, and litigation, with all the associated transaction costs, should decrease.

It is encouraging to see that taxpayers' rights are on the agenda in so many countries. It is disappointing to see how difficult it is to create and strengthen such rights, particularly when wider ranging social rights are favoured by governments, particularly in the European Union. Consider search and seizure powers and protections against self-incrimination, which are areas where many countries allow greater power to the revenue authorities than they do to the police. Information-gathering by revenue authorities is another area of concern in an information age. Perhaps taxpayers in democracies should make more of the political fact that those with the power to change the laws will usually only limit their exercise of power if it is the only way they can stay in control.

Strong taxpayer rights may have to wait for the introduction of a general Bill of Rights of the kind introduced in Canada and South Africa. Provisions such as the South African constitutional entrenchment of the right to administrative justice could impact powerfully on tax administration. The introduction of the Canadian Charter led to numerous amendments to the tax law, and the Declaration of Taxpayer Rights. What is surprising is that few tax administrations seem convinced by the research showing that a positive relationship with taxpayers can improve compliance significantly.

The politics of tax reform

Around the world, taxpayers are saying that the tax laws are too complex and need urgent simplification. Graeme Cooper argues that it depends what you mean by simplification.¹ It is difficult to find a consistent definition. The current Australian Tax Law Improvement Project, responsible for re-writing the tax law, seems to think that it means expressing the tax law in language the taxpayer can understand.

When taxpayers say they want simple tax laws, they are talking mainly about ease of compliance. Modern transactions are often complex, whether they relate to running a business from home using

¹ On tax simplification we highly recommend Cooper GS, "Themes and Issues in Tax Simplification" (1993) 10 *Australian Tax Forum* 417.

all the latest technology or conducting a small export business. This means that simplification of compliance usually means putting taxpayers into broad categories and sacrificing a large element of equity and neutrality. There is then little scope for allowing special claims, except through complicated opt-out clauses that require full substantiation. The question is whether taxpayer interest groups will permit their politicians to simplify the system if it means that any group, particularly a vociferous group, is disadvantaged.

In Australia, nearly all taxpayers lodge their returns through a tax agent and, to take just one group, there are hundreds of pages of public rulings to guide employees as to which work-related expenses are deductible. Taxpayers can't have it both ways. If individuals want long lists of deductions, they cannot expect it necessarily to be easy to obtain them.

A system resembling the United Kingdom style would simplify matters. Abolish work-related deductions for individuals not in business. Deduct tax at source on salary or wages through the pay-as-you-earn system. Require deduction of tax at source from payments of unfranked dividends and interest at a low rate of tax. Compress tax rates to two levels. These can be lower than current rates to compensate for lost deductions. Compliance and administration costs should drop significantly. Most non-business individual taxpayers would not have to lodge returns and, with appropriate monitoring systems in place, the Australian Taxation Office could be sure that the right amount of tax had been paid.

For business taxpayers an incentive system could improve compliance, along the lines of the Japanese blue returns. Businesses that show a required standard of accounting and record-keeping could be given rewards. In Japan, the rewards include increased depreciation allowances or the right to carry back losses to preceding years.

Comprehensive and detailed reforms have been proposed ad nauseam. Governments are remarkably unready to adopt them. Politically it is too difficult. Even successful reform can only hope to make what is unpleasant a little less unpleasant. Bad or poorly-timed reform can be disastrous for those in power, or those seeking it. Yet Australia needs tax reform urgently for its economic well-being. Politics should not inhibit this. Perhaps it is time for an independent Reserve Bank to take control, not just of interest rate policy, but also of tax policy. The government could provide an

agenda to the Reserve Bank, who could implement it in the most effective way, but only to the extent it was possible and sensible.

Duncan Bentley

**General Editor
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