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## Editorial

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# Editorial

## **Abstract**

[Extract] Tax reform is one of those marvellous terms that sounds visionary and idealistic, evoking thoughts of change and new deals.

The reality is grubbier. Grand theories are dissected and dismembered by various interest groups. Political reality creates alarming distortions that challenge the minds of administrators and tax professionals for years afterwards.

Yet where politicians with large political mandates or powerful personalities ignore consultation and the democratic process they often do so at their peril.

## **Keywords**

tax reform, tax, revenue law journal

## EDITORIAL - Volume 8

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The reality is grubbier. Grand theories are dissected and dismembered by various interest groups. Political reality creates alarming distortions that challenge the minds of administrators and tax professionals for years afterwards.

Yet where politicians with large political mandates or powerful personalities ignore consultation and the democratic process they often do so at their peril.

Margaret Thatcher's "poll tax" is a recent example. It is time to widen the debate to address some of the current distortions that have a significant impact on voters. We need to consider such things as whether expenditures are given most efficiently through the tax system; whether ill-considered drafting of tax law is inevitable; and what we can do to alleviate perceptions of inequity in the context of growing bureaucracy.

A disappointing aspect of tax reform talk is the apparent lack of intellectual substance to the views put forward.

The *Revenue Law Journal* tries to contribute to critical tax thinking with its articles. Other groups do the same. In our new book review section we give a brief overview of some of the important collections of essays that do provide a theoretical basis for many of the views so glibly held by their popular exponents. Popular debate is the means by which civilisations advance.

But if it is not grounded in theory it is meaningless. Civilisation is in mortal danger if the main reason for doing something is because it appeals to the self-interest short-term of a majority of voters. There must be rational arguments in favour of what is to be done.

A failing of any group is the inability to think outside the box. We seem to accept as givens the constraints of our society. Edward de Bono is successful because he challenges people to think laterally; to turn an idea on its head; to seek fresh solutions. We need to do more of this in the tax reform debate. Professor Richard Krever has again recently pointed out that if we want to move away from a complex tax system in Australia we need to remove expenditures from the tax system.

Its current complexity is largely driven by the inclusion of any number of concessions to interest groups such as the socially disadvantaged, business groups, primary producers, and cultural groups. If we want a simple tax system we should remove concessions, exemptions, credits, and rebates of this kind and find some other way to deliver the same benefits.

There seems to have been little analysis as to the most efficient method of providing these benefits. If we find that the tax system is the best form of delivery then we must put up with a complex tax system. If not, we should change.

Richard Gordon and Victor Thuronyi raise another issue in a chapter on the design of the tax legislative process, in the book *Tax Law Design and Drafting*, reviewed at the end of this volume.

They identify a lack of co-ordination and consultation in the legislative process as a major international problem in the design of tax legislation. They quote Professor Brian Arnold's research, which shows that, "the three major components of tax policy formulation (policy development, technical analysis, and statutory drafting) should be performed by a single agency." In Australia Professor Arnold found that significant problems arose as the functions were divided among three different units: the Tax Policy Division of the Treasury, the Legislative Services Group of the Australian Taxation Office ("ATO") and the Office of Parliamentary Counsel.

It is interesting to note the difference in quality between recent legislative amendments produced through these channels and the far superior efforts of the Tax Law Improvement Project ("TLIP"), which is almost solely responsible for the rewrite of the complete tax law. Once the TLIP is finished, we shall doubtless return to the inefficient processes that helped to produce the drafting absurdities in the old law, and wonder why the standard of tax law begins to deteriorate once again.

Another issue we face in reviewing our tax system is the power of the executive and its bureaucracy. Fundamental to any democratic system is the principle that the organs of government are subject to the rule of law.

In recent years the executive arm of government has grown in importance, increasingly and, perhaps necessarily, usurping the role of the legislature. Many of the powers that the executive arm exercises are too broad, too complex, too detailed, for the legislature to do more than to act in a monitoring role.

The size and extent of the activity of the executive and its public service places a heavy burden on the courts, as they seek to uphold the rule of law, particularly when it requires the overturning of executive decisions.

The problem for the courts is that administrative decision-making is often not subject to the law, except in narrow procedural areas.

This leaves large tracts of what effectively is the law, unguarded by an independent and impartial judiciary. It strikes at the heart of the democratic form of government. Sir Gerard Brennan, Chief Justice of Australia, recently recalled Lord Hailsham's statement that, "We live under an elective dictatorship, absolute in theory if hitherto thought tolerable in practice".

The Chief Justice noted that, in Australia, the "description is close to the mark... But there are dangers in maintaining a structure which lends itself to the concentration of political power in the Executive Government.

There is a risk of efficiency turning to tyranny. The traditional checks and balances are inadequate to protect minorities and the interests of individuals".

Whether or not this is true, it is vitally important, if it is the way people see government. Our reaction to government is often determined by our perception of its fairness.

The perception will have most effect at the major interface between the government and the people: the operation of the tax system. Tax compliance research has long shown this to be so. The ATO, along with other tax administrations, has changed the way it operates to try and build positive relationships with taxpayers. The efficient operation of a system of self-assessment depends upon it.

When people feel powerless against governments and bureaucracy, which they feel act unfairly, they tend to stage their own, small rebellions. Enough dissatisfaction with the tax system can undermine its operation. Picture Saturday morning soccer for the under eights in a suburb where the median income is below the national average.

The parents include teachers, retailers, wholesalers, and builders. They spend 40 minutes sharing how they manage to avoid declaring taxable income. Picture a group of secretaries discussing ways to supplement their incomes by taking on typing in the evenings.

They are horrified when one of their number suggests that they should declare the income in their tax returns. These are hardly the high income earners who are the focus of ATO comment in the press and whose misuse of trust structures threatens to undermine their future legal use by anyone. Picture a meeting with tax officials and tax advisers.

The advisers seek informal clarification on the ATO view of certain offshore structures. The ATO officials express concern at their inability to track most offshore transactions that taxpayers do not declare.

Note the ATO Commissioner's Award for Research in Taxation is for papers addressing the impact of tax havens and bank secrecy in administering Australia's tax system. Various claims are made as to the amount of money in, or transferred through, tax havens: some suggest that it is more than half of global funds.

Are these simply the musings of a lawyer using anecdotal evidence? Dr William Glen's research lends support. In a number of different groups of students surveyed, a majority indicated that they did not agree that individual members of the public in general should under-report some income in their income tax return, even where there are special circumstances, like unfair tax laws or economic hard times.

However, a majority did say that they would not always report cash in hand from odd jobs on their own income tax returns, where they knew the employers kept no wage records of the payments.

Anecdote, research, and the estimated size of the cash economy suggest that the public do not see tax evasion as theft of funds from their fellow citizens. Rather, they view it as simply keeping back some of what is rightfully theirs from a government that is asking too much of them.

Equity has a major influence in tax system design. However, it is valid to ask whether equity is really served by a system that is seen as inequitable; by a system that is seen as there to be fleeced.

Whatever the inequities of presumptive taxation, are they really greater than the hidden inequities in the current system? Increased use of thresholds and exemptions is a feature of recent legislation.

Would it really be inequitable to move to a combination of collection at source and presumptive taxes? Might it also prove more efficient to move expenditures out of the tax system? Should we pay heed to international research and change our process of legislative drafting?

Most people accept that we need an efficient tax system, with well-drafted legislation; that the system should be fair and seen to be fair, but in the context of the system as a whole; and that taxpayers should endorse the collection of taxes as a legitimate act of Government.

These issues and many others deserve informed debate. Let us hope that there is an opportunity to pursue such debate in the current reform process. Let us hope that the arguments of those who have studied the questions are not lost when they are distilled into "sound-bites" for media distribution.

**Duncan Bentley**  
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General Editors, 1998