I. INTRODUCTION

Chapter 2 provided a theoretical basis for taxpayers' rights drawn from the rights literature. It developed the concept of a two-tiered Model as a timely, beneficial and realistic response to the move towards standards in a domestic and international context. Chapter 2 concluded that a Model would need to be based on generally accepted rules, which could be adapted to fit the context of individual jurisdictions.

In Chapter 2 two important limits on the Model were raised. It was noted that there are accepted principles that underlie the structure and operation of tax systems and the rules they contain. Any rights included in a Model would need to comply broadly within these principles. Chapter 2 also noted the diversity of different systems and the need to apply the Model contextually. This raises the second limit: interpretation of the Model. The two issues are connected. They are both limits on the Model. The interpretation of the rights included in the Model is aided by a clear understanding and application of the principles on which they are broadly based.

Chapter 3 notes first that although there are accepted principles, their specific definition varies almost as often as the reports on tax systems in which they appear. The first part of the chapter draws from a number of the more important reports on tax systems a definition of the basic principles that should broadly apply to the Model. These are used to provide support throughout the remaining chapters for the rights chosen for inclusion in the Model.
Chapter 3

The second part of Chapter 3 analyses the interpretation of Model rights once they are chosen. It acknowledges the problems of blurred definitions and sets out a number of barriers to common interpretation. Chapter 3 concludes with a recommended initial approach to interpreting Model rights. It can be adopted in any jurisdiction and sits broadly on the principles underlying the Model.

This chapter sets the framework for analysis of taxpayers' rights, as opposed to other rights. Taxpayers' rights must be examined not only in the context of the broader rights discussion, but in the context of the tax policy discussion.

II BASIC PRINCIPLES

Adoption of income taxation as a primary source of revenue by governments has a relatively short history. This has some advantages. Particularly in the last 50 years, principles, such as those identified in 1776 by Adam Smith, have been developed to provide a broadly accepted basis for developing tax policy. The theoretical basis for an equitable and efficient tax system provided by such eminent scholars as R.M. Haig and H.C. Simons is widely understood if seldom adopted. The more widely used principles that draw on public finance theory, but which blur the economic definition, are nonetheless relevant and helpful in the identification of a number of rights that should be included in a model of taxpayers' rights and in providing a basis for others. Because they have been abstracted from the theory, there are variances in the definition of these

principles and the analysis in this chapter puts forward one possible uniform set of
definitions in the broader context of rights interpretation.

The principles underlying tax systems act as values that shape legislation. Tax reform
has been one of the major trends of the last 50 years, which has ensured that these
principles are under constant review. Some reports, such as the Carter Commission Report
of Canada in 1966 have been highly influential internationally. The ubiquitous presence of
IMF and other international tax advisers when countries undertake serious reform of their
tax systems has also assisted in some commonality of approach.

Without exploring the economics underlying current approaches to taxation, it is
worth mentioning the broad context in which the principles have developed. Musgrave, one of the most influential public finance theorists, divides the economic functions of
government into:

- overcoming the inefficiencies of the market system in economic resource allocation;
- redistributing income on a socially acceptable basis; and
- smoothing cyclical fluctuations to ensure high levels of employment and price
  stability.

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To achieve its economic aims and some form of income redistribution, a government needs funding. The tax system provides that funding. The shape of the funding process rests upon the values underlying the tax system. Alley and Bentley have summarised the values set out in a number of the more important reports and other sources as follows:

<table>
<thead>
<tr>
<th>Author</th>
<th>Criteria</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adam Smith 1776</td>
<td>Equality, Certainty, Convenience of Payment, Economy in Collection</td>
<td>Canons of taxation.</td>
</tr>
<tr>
<td>Carter Report - Canada 1966</td>
<td>Equity, Neutrality, Transparency and Accountability, Certainty, Simplicity, Flexibility</td>
<td>The Use of the Tax System to Achieve Economic and Social Objectives</td>
</tr>
<tr>
<td>Asprey Report - Australia 1975</td>
<td>Fairness, Efficiency, Simplicity, Growth, Stabilisation</td>
<td>Criteria for Tax Systems</td>
</tr>
<tr>
<td>O'Brien Report - Ireland 1982</td>
<td>Equity, Efficiency, Simplicity, Low administrative and Compliance Costs</td>
<td>Criteria For a Tax System</td>
</tr>
<tr>
<td>Ridge and Smith</td>
<td>Administrative Feasibility Economic</td>
<td>Criteria for Local Tax</td>
</tr>
</tbody>
</table>

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6 A. Smith and K. Sunderland, above n. 1.
12 Alternatives to Domestic Rates (Cmd 8449, HMSO 1981).
<table>
<thead>
<tr>
<th>Year</th>
<th>Principles</th>
<th>Characteristics of an Efficient Tax System</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>Efficiency, Equity and Accountability</td>
<td></td>
</tr>
<tr>
<td>Jackson</td>
<td>Equity or Fairness, Certainty, Convenience of Payment, Economy in Collection and Compliance, Transparent.</td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td>Neutrality, Efficiency, Certainty and Simplicity, Effectiveness and Fairness, Flexibility</td>
<td>Taxation Framework Conditions (for electronic commerce)</td>
</tr>
<tr>
<td>OECD (Ottawa) 1998</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICAEW Tax Faculty 1999</td>
<td>Statutory, Certainty, Simplicity, Easy to Collect and Calculate, Properly Targeted, Constant, Consultation, Regular Review, Fair and Reasonable, Competitive</td>
<td>Principles for a Better Tax System</td>
</tr>
<tr>
<td>James and Nobes 1997</td>
<td>Efficiency, Incentives, Equity, Macroeconomic Considerations</td>
<td>Principles of Taxation</td>
</tr>
</tbody>
</table>

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A Deriving a Common Meaning

The principles overlap and some lists are more extended than others. After an analysis of
the common meaning of the above principles, Alley and Bentley propose a framework of
principles that encompasses most of those listed. These are set out below, with a brief
description of their common meaning. As in the context of the discussion of rights in
Chapter 2, the principles are based on value judgments. There is a core of agreed meaning
but also a penumbra of uncertainty that is explored in the different reports and analyses. If
the principles are to provide a source and sometimes a measure in rights analysis it is
important to identify this core of agreed meaning.

1 Equity and Fairness

- Taxation system design should take account of horizontal and vertical equity.
- It is important that the public perceives the tax system as fair.
- Inter-nation equity should be considered for international elements.

From the taxpayer’s perspective, where fairness equates to equity, there are two major
elements that make an equitable tax. It should treat people in similar circumstances in the
same way: this is horizontal equity. It should ensure that tax is allocated fairly between
people in different circumstances: this is vertical equity. There is a caveat, argued for
example in the Asprey Report, that measuring equity is not easy.

20 Above n. 7, p. 621 et seq.
21 K.C. Messere, Tax Policy in OECD Countries: Choices and Conflicts (Amsterdam, IBFD Publications BV,
22 C.R. Alley and D. Bentley, above n. 7, p. 622.
23 Reform of the Australian Taxation System, RATS, Draft White Paper Reform of the Australian Taxation
24 Asprey Report, above n. 10.
This leads to the second principle, that the public should perceive the tax system as fair. The implementation of tax reform must often contend with aberrations that breach the principles of equity, but are nonetheless seen as fair. This is perhaps founded in self-interest rather than logic. For example, failure to tax capital gains would seem to breach both vertical and horizontal equity. Yet, New Zealand has not extended its income taxation to taxation of capital gains and the public perceive the tax system as fair.25

As an example, Article 31(1) of the Constitution of Spain adopts both principles and requires that:27

All shall contribute to the sustenance of public expenditures according to their economic capacity through a just tax system based on the principles of equality and progressiveness, which in no case shall be of a confiscatory scope.

The perceptions of fairness and equality were seen as important when the Constitution was passed in 1978. The changing nature of what is perceived as fair is seen in the requirement for progressiveness. Although income taxes remain largely progressive, the same cannot be said for the European Value Added Tax and some other indirect taxes.

Despite overt and implicit support for the concept of fairness, in the context of tax policy and the design of the substantive elements of the tax system, for the most part taxpayers' rights have been excluded. They are centred rather on procedural fairness (or Neumann's 'thin' concept of the rule of law discussed in Chapter 4). This may also relate back to the discussion of states' margin of appreciation in Chapter 2. In general terms states do not brook interference from individuals on matters of broad policy and design.

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Chapter 3

is seen as largely political, the province of the elected government, which must obtain approval of its actions from the legislature rather than from individuals.

The perception of fairness, however, usually relates in large part to the implementation of tax rules. The manner in which the system provides and enforces taxpayers' rights can therefore be critical to the perception of fairness. Likewise, whether a right adds to a taxpayer's perception of fairness provides a useful measure of the value of that right.

A third and different aspect of equity and fairness is inter-nation equity, or the equitable division of tax revenue between countries. This relates to taxpayers’ rights in the application of negotiated or unilateral solutions to the problem. The development of general international principles has seen the establishment of an extensive international network of tax treaties, which is aimed both at preventing tax avoidance but also and most important for the taxpayer, ameliorating double taxation. The tax treaty system has been supplemented by generally agreed approaches within the OECD in certain areas, such as to transfer pricing and to harmful tax competition. Another multilateral example is the extensive international discussion of electronic commerce designed to overcome the perceived threat it poses to inter-nation equity by undermining source taxation. General international agreement provides certainty, but leaves open the issue of whether a taxpayer can realistically rely upon such agreement in the domestic jurisdiction.

Where the fundamental policy issue underlying inter-nation equity is whether tax systems should favour residence or source based taxation, it is the rationale behind the principle that is important in the taxpayers’ rights context. The arguments for both

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28 S. Picciotto provides a comprehensive historical background in International Business Taxation (London, Greenwood, 1992), chs 1-3.
30 For a detailed discussion see R.I. Doernberg, L. Hinnekins, W. Hellerstein and J. Li, Electronic Commerce and Multijurisdictional Taxation (New York, Kluwer, 2001) 3.1 and 4.3.1.3.
residence and source taxation rely on different versions of economic allegiance and derivation of benefits theories.¹¹ Either theory suggests that it is reasonable for a person benefiting either economically or otherwise from a jurisdiction to make a contribution back to that jurisdiction. The benefits provided include the protection of property, which allows the property holder to make a contribution to the fisc, as discussed in Chapter 2. The extension of the discussion in Chapter 2 is that there is a principle flowing from international equity that a jurisdiction has a responsibility not only to protect its own allocation of revenue, but to protect the rights of its taxpayers in that process as against other jurisdictions. In other words, it is not enough for a jurisdiction simply to assert its right to tax. For the full application of international equity, it should also ensure that taxpayers required to pay tax are suitably protected in the process.

2 Certainty and Simplicity³²

- Tax rules should not be arbitrary.
- Tax rules should be as clear and simple to understand as the complexity of the subject of taxation allows, so that taxpayers can anticipate in advance the tax consequences of a transaction including knowing when, where and how the tax is to be accounted.
- There should be transparency and visibility in the design and implementation of the tax rules.

³² C.R. Alley and D. Bentley, above n. 7, p. 622.
Certainty and simplicity are two of the most favoured, yet most elusive, qualities of any tax system. The first point is that rules should not be arbitrary and this goes to the heart of a rights analysis. As Adam Smith said,\(^{15}\)

> The tax which the individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought to be clear and plain to the contributor and to every other person.

A certainty that avoids being arbitrary depends on clear statutes and timely and understandable administrative guidelines that are accessible to all taxpayers.\(^{14}\) It is fundamental to the proper operation of a tax system and underpins many of the rights discussed in subsequent chapters.

However, it is not always clear what ‘certainty’ means. In the context of the introduction of rules governing the taxation of electronic commerce, the EU issued a Communication,\(^{15}\) which stated that there ‘should be certainty about the rules and compliance should be made as simple as possible to avoid unnecessary burdens on business’. A 1999 UK Report on the taxation of electronic commerce stated that, ‘the rules for the taxation of e-commerce should be clear and simple so that businesses can anticipate, so far as possible, the tax consequences of the transactions they enter into’.\(^{16}\)

> It is interesting that the EU Communication favours certainty of rules, but simplicity of compliance. Perhaps it recognises the difficulty in making rules simple. The OECD\(^{37}\) and UK approach is for the rules themselves to be both clear and simple. Even if simplicity

\(^{13}\) A. Smith and K. Sunderland, above n. 1, p. 452.

\(^{14}\) Above n. 19, p. 12.

\(^{15}\) E-Commerce and Indirect Taxation: Communication by the Commission to the Council of Ministers, the European Parliament and to the Economic And Social Committee (COM(98)374final; 17/6/98).

\(^{16}\) Inland Revenue and HM Customs and Excise, Electronic Commerce: The UK’s Taxation Agenda (‘1999 UK Report’) (London), para. 2.9.

\(^{17}\) The Committee on Fiscal Affairs, Electronic Commerce: Taxation Framework Conditions (OECD, 1998), and p. 6, <www.oecd.org/dataoecd/46/3/1923256.pdf>, 6 September 2006, stated that ‘The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a
is confined to making the rules simple to understand, it is a difficult task. The rules governing the taxation of electronic commerce are an excellent example of the difficulties of translating complex transactions into simple rules, as the rules will necessarily follow the nature of the transaction. They are often so complex that governments struggle to make them certain, let alone simple. An admirable aim is to draft the rules clearly, using simple language. It will aid certainty. Even then, the rules will only become certain over time, as they are interpreted and applied. During a period of change, as the rules are adapted to cope with the transactions they govern, it is inevitable that they will appear complex. The rules will be new and there will be different interpretations of their meaning.

Debate in Australia identified some of the difficulties facing policy makers in implementing the principles of certainty and simplicity. From 1 July 2002, drafting tax legislation was moved from the ATO to the Department of the Treasury (Treasury). Part of the rationale was that, as Treasury was responsible for formulating tax policy, it should have more input into the translation of that policy into legislative design. Bringing policy and legislative development together aimed to produce a strategic alignment between Government policy and its implementation in legislation.

On 16 December 2004, the Australian Government issued its Report on Aspects of Income Tax Self-Assessment. It identified the conflict between certainty in the law and simplicity in the drafting of the law:

During the 1980s and 1990s the tax legislation set out in increasing detail how the law applied in a variety of fact situations. This was seen as desirable because taxpayers...
naturally want a high level of certainty as to whether and how the law will apply in their particular circumstances. While the 'detailed' approach to law does provide certainty where a taxpayer's circumstances are specifically addressed by a rule, laws designed in this way can never anticipate all the relevant circumstances for every taxpayer.

As factual circumstances vary greatly, covering a wide range of circumstances in detail is likely to result in law that is long and complicated. Complex circumstances are not easily clarified through elaboration in the law, at least not without generating legislation of inordinate length. Indeed, by introducing more boundaries between the legal concepts, potentially there is increased scope for ambiguity and uncertainty. Long and detailed law can also make it harder to find the underlying policy intent and thus increase the risk that the courts will interpret the legislation in a way unintended by Parliament. When a statute is cast in a very specific way, new circumstances can generate loopholes or inequities, requiring further specific legislation and so on.

Instead, it suggested that Treasury should use a principle-based approach to drafting of tax legislation.\(^1\)

The benefits of principle-based drafting are theoretically that laws tend to be simpler and shorter, more flexible, more stable, more certain, and because draft laws are then conceptually simpler, it apparently provides a better basis for consultation. It is probably a futile exercise to attempt to make the rules substantively simple.\(^2\) However, the aim is in line with the EU definition of simplicity as keeping the burden of administration and compliance costs to a minimum.

\(^1\) Ibid.
It is appropriate to consider certainty and simplicity together because so often there
is a conflict between them, both in terms of legislative drafting and taxpayer compliance.
Attempts to make the rules more certain usually make them less simple to understand. The
simpler the rules are the less simple they usually are either to comply with or to administer.

In the discussion in Chapters 6 to 8, the rights that provide certainty must be seen in
the context of the struggle by revenue authorities to achieve certainty and simplicity in the
face of policy demands. However, policy should not be used as an excuse to override basic
taxpayers' rights. In striking this balance, the third point, that there should be transparency
and visibility in the design and implementation of the tax rules becomes more important.

Consultation during policy development has become more common. This must be
seen in the context perhaps of developed common law jurisdictions, where there is a wider
tradition of general debate in the formulation and development of the law. It is less easy to
require of a jurisdiction which is traditionally opaque. For example, Ishimura is concerned
that, 'the Japanese government and tax authorities show no sign of promoting the fairness
and transparency of tax procedures'. Although the Japanese National Tax Administration
may argue that this is no longer the case, it would be an issue found in some jurisdictions,
particularly developing countries without the tradition or political infrastructure to consult
widely.

In many OECD jurisdictions consultation is the norm. In Australia, for example,
estensive consultation took place to try and ameliorate some of the costs of compliance
placed on taxpayers with the implementation of major tax reforms in 2000. Consultation
and communication made it easier for revenue authorities to gain acceptance for electronic

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\footnotesize{Article 4, NTA, 'An Outline of Japanese Tax Administration', <www.nta.go.jp/category/outline/english/2741/content.htm>, 6 September 2006.}
compliance and delivery of services. Taxpayers can see the revenue authorities both keeping in touch with the latest developments and assisting taxpayers to take advantage of electronic communication.46

The measures of certainty and simplicity relate to a model of taxpayers’ rights. They will permeate the analysis of rights in the chapters that follow. The measures are framed so that they are achievable in any jurisdiction.

3 Efficiency47

Compliance and administration costs should be minimised and payment of tax should be as easy as possible.

Efficiency extends, of course, far beyond this point. However, the narrow definition has broad acceptance as a principle underlying tax policy. For example, in the context of electronic commerce the OECD Taxation Framework Conditions paper48 defines efficiency narrowly in terms of minimisation of compliance and administration costs through improving taxpayer service and tax administration. The same approach is taken in both the EU Communication49 and the 1999 UK Report.50


47 Above n. 7, p. 622.

48 Above n. 16, p. 8.

49 Above n. 35, p. 7.

50 Above n. 36, para. 2.9.
Because minimising taxpayer compliance costs and making compliance easier is thought to improve revenue collection, it is a prime focus for tax authorities.\textsuperscript{31} So, too, is any reduction in the cost of administering the tax system. It is in these areas that most can be done in the short-term to improve co-operation between jurisdictions. Although it is a narrow view of efficiency, potentially it could have the most impact on the widest number of taxpayers.

Revenue authorities are naturally defensive when claims are made about the high costs of compliance. However, the adverse publicity does place pressure on governments and revenue authorities to consider compliance costs in formulating and implementing tax policies. This is doubly important where the potentially high costs of administering and monitoring a particular form of taxation provide a significant incentive for governments to shift those costs to taxpayers and third parties.

Adopting the principle that compliance and administration costs should be minimised provides a framework for negotiation between the different stakeholders to determine a fair allocation of responsibilities and associated costs. It also provides a basis for including in the analysis whether taxpayers’ rights will be impacted significantly by a change in the law that might increase compliance and administration costs. However, negotiation of this kind is fairly limited between taxpayer groups and policy makers. If taxpayers’ rights are to have meaning at the policy level, they should be integral to the...
design and formulation of both policy and legislation. This would extend to ensuring that efficient tax administration is seen as a policy issue not simply for tax administration but to improve the effectiveness of taxpayers’ rights. This will be explored further in Chapter 7, but is also relevant to the mechanisms used to enforce legislative protection, discussed in Chapter 5.

4 Neutrality

- The tax system should not impede or reduce the productive capacity of the economy.

- Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.

- Capital import neutrality and capital export neutrality should be considered.

Neutrality applies to substantive tax policy and the formulation of the regulatory framework implementing it. Although relevant to wider legal principles such as non-discrimination, those are usually considered in the context of equity and fairness. Neutrality, particularly given its narrow economic meaning in the three points, has least relevance to taxpayers’ rights.

53 C.R. Alley and D. Bentley, above n. 7, p. 622
5 Effectiveness

- The system should collect the right amount of tax at the right time without imposing double taxation or unintentional non-taxation at both the domestic and international levels.
- The system should be flexible and dynamic to ensure a match with technological and commercial developments.
- The potential for active or passive non-compliance should be minimised while keeping counter-acting measures proportionate to the risks involved.

The second point is more of an economic policy point, but the first and third points have strong implications for taxpayers' rights. Tax collection is an area perceived as most open to abuse. This has been true throughout history from biblical times, when the cheating of tax collectors made it into Jesus' parables, through to some extraordinary claims in the US against the IRS by Congress, resulting in the Taxpayers' Bills of Rights. The discretion available in tax collection underlies taxpayer concerns that there should be clear rules and guidelines to ensure the effectiveness of the tax collection process.

From the revenue authorities' perspective risks to revenue must be minimised, while maintaining a proportionate response. The process of dealing with areas of risk is another critical area where taxpayer protection is essential while safeguarding the revenue. This is particularly true in the international context. Negotiating to eliminate international double taxation, non-taxation and tax avoidance is a complex and bureaucratic process. It is assumed that the protection of individual taxpayers' rights takes place within the domestic

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55 A. Greenbaum, United States Taxpayer Bills of Rights 1, 2 and 3: A Path to the Future or Old Whines in New Bottles, in D. Bentley, above n. 43, ch. 15.
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jurisdiction. Consequently, the mechanisms to prevent individuals from being double taxed where an international agreement fails are usually unwieldy and can be ineffective.

It is one thing to ensure the effectiveness of the tax system at the level of administration, collection and enforcement. It is a much harder task to do so while preserving the rights of taxpayers. Any model must ensure a balance between the two.

B Maintaining the Balance

The principles will always compete and the art of taxation design is to balance the principles most effectively in achieving the intended purpose. As the Carter Commission put it:56

We realize that some of the objectives are in conflict, in the sense that movement toward one goal means that others might be achieved less adequately. Simultaneous realization of all the goals in some degree will constitute success if, as we hope, our choices as to the appropriate compromises adequately reflect the [informed] consensus.

However, achieving the principles, values or goals that underlie the tax system must only be done in the context of the broader framework of taxpayers' rights. The basis that taxpayers' rights have in law must always 'trump' a principle without such a basis.57 In the design process, which is relevant to a model, the principles should be taken into account to provide the best outcome for the taxpayer, while preserving to the greatest extent possible, achievement of the balance of goals envisaged by the Carter Commission.

56 Carter Commission, above n. 4, p. 17.
To the extent that tax policy does not support a balance, there are also concerns for taxpayers' rights. For example, pursuit of effectiveness by giving the revenue authority a wide discretion is at the expense of certainty. It may seriously undermine the right of taxpayers to know how much tax they should pay and provide procedures leading to arbitrary imposition of taxes.

In considering the rights for inclusion in a model, reference will be made to the principles outlined in this chapter. They will provide a measure and sometimes a basis for rights that are included.

III INTERPRETATION OF THE CONTENT

A Introduction

In the same way as the principles that are often used as a generalised measure of a successful tax system have variations in meaning, the interpretations of rights themselves are often different. This is natural given the range of jurisdictions, both civil law and common law that have incorporated taxpayers' rights into their tax systems. The crossover between similar systems is difficult. That between different systems is even more so. This section explores the reasons for and the substance of some of these barriers to interpretation and submits that there is a sufficient core of certainty\(^{18}\) in the underlying meaning of taxpayers' rights to make exploration of a model worthwhile. In addition, the principles explored in the first part of this chapter can add weight to that core of certainty.

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History has aided the development of rights and common understanding but has encouraged blurring of definition. The Second World War provided a major impetus for the international protection of human rights. This was reflected in the establishment of international agreements on human rights, international courts and commissions of human rights, and national and international organisations designed specifically to protect human rights. The difficulty in determining the meaning of human rights generally is discussed in Chapter 2. With the focus on human rights, it was inevitable that attention should be paid to less well-defined areas, such as taxpayers' rights. Traditional human rights lawyers are unsure whether taxpayers' rights should really be categorised as human rights. But the human rights focus of the last 50 years has changed the way people think. Rights, and the language of rights, have become an integral part of our culture. Rights are something that everyone can understand and they are something that everyone wants: they have evolved in popular consciousness as being very positive.

This development of a rights culture is reflected in the political consciousness and there has been an increase in community participation in the political process. The formulation of administrative charters or statements of rights, the introduction of a wider variety of ombudsmen, advocates and other public or consumer representatives have gathered momentum in this context. However, the proliferation of different statements of taxpayers' rights comes with a significant drawback. With popularity comes generalisation and blurred definition: taxpayer rights are no exception. Take the debate when Australia was considering the form and content of a charter of taxpayer rights.

59 K. Messere, above n. 21, ch 5, where there is some discussion of definitional ambiguity and the irrationality of language. This is a fascinating study in itself, but goes beyond the scope of this thesis.

60 It is only really since the development of case law considering taxation under domestic Charters or Bills of Rights in countries such as Canada, New Zealand and the EU that there has been wider acceptance of discussion of tax law and taxpayers' rights in this context. Previously, the use of specific exclusions and
The Australian Taxation Office (ATO) position was that the charter should contain no new rights protected by law. Rather, the ATO argued, a charter should reflect existing legal rights and administrative concessions; it should also contain a commitment by the ATO to meet the service expectations of the community. The Commissioner of Taxation expressed particular concern that the introduction of a charter should not clog the courts and impede efficient ATO administration by opening the floodgates to a spate of legal actions against the ATO. Naturally enough, the ATO also wanted to use a charter to stress taxpayer responsibilities.

Many professional groups criticised the ATO approach, claiming that it gave taxpayers nothing more than they already had. The professional groups wanted legal rights enforceable at law. They wanted new rights, to fill what they saw as holes in existing taxpayer protection. Naturally enough, when the government followed the ATO approach, many professional bodies denounced the charter as a waste of time and money. However, it was not a fair conclusion.

As often happens in debates of this kind, the parties tended to argue at cross-purposes. Until recently there has been little theoretical examination of taxpayers' rights. As a result, there was little context in which to place the debate. Arguments put forward tended to choose a model of enforcement: either a legislated model or an administrative model. The arguments also proposed a number of rights. However, the rights did not necessarily fit within the chosen model of enforcement. Professional bodies tended to

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the margin of appreciation doctrine, discussed in Chapter 2, precluded widespread consideration.


62 As was done, eg, in the United Kingdom's Taxpayer Charter and New Zealand's Statement of Principles.

63 For example, A. Carey, above n. 61, p. 544, said that, 'Without legislative force, the Charter will lack credibility because it becomes simply another ATO brochure - certainly of interest, but of little practical importance...Any who do seek reliance on it will likely be met with blank looks from ATO counter staff'.

argue for rights within a legislated charter of rights, some of which could not be enforced through legislative mechanisms. On the other side, the ATO put forward as administratively enforceable rights, goals that they could only aspire to. If either side was aware of the distinction, they did not make it plain. It is not surprising that the debate became somewhat hot and confused.

The Australian debate illustrates that, with the introduction of taxpayers' charters around the world, taxpayers' rights have become the subject of popular discussion; if not at breakfast tables, then at least in the tax community. However, worthwhile dialogue depends upon a clear consensus on the subject matter. There is still significant divergence in approach, particularly where the nuances of culture and a different perspective provide curious disparities in the way rights are chosen for protection in different jurisdictions.

C  Barriers to Interpretation

The existence of a classification of rights and a model will not provide uniformity of understanding. The content of each right will differ according to the tax system in which it is found. Content is determined by numerous factors, the more important of which are identified in this section.65

An illustration of the importance of interpretation is found in the context of information exchange.66 The last decade has seen an increase in the focus on international transactions and international tax avoidance. The idea of tax authorities exchanging information on taxpayers to combat tax avoidance is not new. However, its use has only

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65 Interpretation of language is a complex field beyond the scope of this thesis. However, some discussion of the most important factors preventing common understanding is essential at a basic level. See further, in the context of information exchange, V. Tanzi and H.H. Zee, 'Can Information Exchange be Effective in Taxing Cross-Border Income Flows?' in K. Andersson, P. Melz and C. Silfverberg (eds), Liber Amicorum Sven-Olof Lieda (Stockholm, Kluwer Law International, 2001), p. 259.
expanded with the advent of sophisticated methods of electronic information gathering that can be used equally effectively to transfer large quantities of information quickly and easily between states.

Information exchanges are governed by a range of international agreements. Most of these are bilateral, but the focus on regional economic groupings has led to some multilateral agreements. Double tax agreements are the most common bilateral arrangements containing provisions for the exchange of information between tax authorities. At a multilateral level, in 1995 the OECD Convention on Mutual Administrative Assistance in Tax Matters (OECD Convention) entered into force. Its objective is to promote international cooperation to help the national tax laws of the signatories to operate more effectively, while respecting the fundamental rights of taxpayers. It sees the protection of those rights as being based on the national protection within the participating jurisdictions.

The OECD Convention attempts to apply the most favourable protection available in the jurisdictions concerned. For example, Article 22 provides that the stricter secrecy laws in either of two states exchanging information will apply to any information provided. There is an immediate imperative therefore to reach a common understanding of the rights of the exchanging states. It becomes immediately obvious how this can lead to confusion where the states concerned have different languages, different legal systems and different political, economic and social agendas. It is more difficult than treaty interpretation. It requires one state to understand the full content of the domestic rights afforded to the taxpayers of another state and compare it to its own rules before it can comply with the terms of an international agreement to which it is party. This section explores some of the issues relevant to interpretation.
Chapter 3

1 Mechanism for Enforcement

One of the main influences on content and meaning is the mechanism for the enforcement of a right and this is the basis for the classification scheme set out in Chapter 5, where this issue is explored further. In Chapter 5, it becomes clear that the differences between administrative and legislative enforcement of a right provide substantial differences to the content. An obvious example is where a jurisdiction determines that a taxpayer has a right to know the penalties that will be imposed for non-compliance with an aspect of the tax law.

If the imposition of the penalty and the rate at which it applies is set out in legislation without any administrative discretion, then there is strict liability and the content is absolutely clear in all situations. In many jurisdictions, the right to impose a penalty for non-compliance is legislated, sometimes setting out a range of penalties and/or the maximum rate. However, a broad discretion is given as to when a penalty will be imposed and at what rate. The content of the penalty provisions will depend on the criteria used in the exercise of the discretion, how the criteria are applied and whether there is negotiation over the penalty. That there is a penalty for non-compliance is absolutely clear, but its application (content) may vary considerably.

2 Nature and Type of Legal System

The nature of a legal system is crucial in determining the content of the rights of citizens. Rights are meaningful in countries where the rule of law is upheld, and lose their meaning

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As stated in M. Darrow and P. Alston, 'Bills of Rights in Comparative Perspective' in P. Alston (ed.), Promoting Human Rights Through Bills of Rights: Comparative Perspectives (Oxford, OUP, 1999), p. 465, p. 471, in the context of a comparison of bills of rights generally, 'much depends upon the consequences that attach to the recognition of a specific list of rights, especially in terms of the legal and administrative
as the rule of law disintegrates. The apparent presence of the rule of law does not always
mean that it applies to the tax system. Tax administration, collection and enforcement is
one of the most sophisticated roles of government, and one of the first to break down.
Examples of this were the system in Russia during the 1990s, and in many African states
in the 1980s and 1990s. To all intents and purposes the rule of law is in place, but as far as
the tax system is concerned, the government bureaucracy does not have the resources, the
power, or the training to give proper effect to all tax laws.

The type of legal system and its context will also determine the content of taxpayer
rights: the marked differences between civil and common law systems are quite often also
found among systems of the same kind. Two otherwise similar systems of law may have
quite different structures; for example, the structure of their appeals systems. Darrow and
Alston suggest that the prevailing system of government and the nature, role and effect of
the legal system must be explored before there can be any real understanding of the
meaning of the rules it contains. There is more common ground in the area of taxation
law than in many other areas of the law. Nonetheless, tax is, in many ways, a gloss on the
legal system, or a legal ectopia, as John Prebble describes it. That means that whenever tax
is imposed, differences in the substantive law governing the arrangement or transaction to
be taxed will translate into differences in tax administration and procedure. For example,
the constitutional concept of the separation of powers is different in Sweden from the
same concept in common law countries. This impacts on the nature of the ruling system:

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65 S. Himes and M. Millet Einbinder, 'Russia's tax reform' (1999) 215 OECD Observer,
<www.transparency.org/content/download/4449/26756/files/22_East_Africa_Mwenda.pdf>, 6
September 2006.
67 See, eg. OECD, Taxpayers' Rights and Obligations (Paris, OECD, 1990) and D Albregtse and H. van
II.
69 For a discussion of these principles, see A. Hultqvist, Legalietsprincipen vid inkomsterbätsmånget (Stockholm,
Juristförlaget, 1995), chs 3 and 4.
the extent to which the National Tax Authority in Sweden can provide public rulings is arguable, whereas the principle of the separation of powers in Australia does not prevent the ATO from issuing public rulings.\footnote{For a discussion on this point, see D. Bentley, 'A critique of the Swedish rulings system' (1997) SkatteNytt 567, 580.}

3 Language

Care must be taken, when comparing tax systems, to understand the nuances underlying the legal or administrative interpretation of the content of rights. An Australian doing business in Hungary and the United Kingdom might be comforted by the apparent similarities of those tax systems' administration. The reality could be quite different. Language is a major barrier to understanding content. Sometimes ignorance of meanings in a common language is even more dangerous than ignorance of those in a foreign language, because they are so unexpected. For example, a business operating in Japan would take care to understand the legal effect of tax circulars, but might assume that advance rulings provided by tax authorities in the different English-speaking jurisdictions are broadly the same because they have the same name, whereas they are in fact quite different in their operation and effect.\footnote{For a comprehensive international review, see D. Sandler and E. Fuks (eds), International Guide to Advance Rulings (Amsterdam, IBFD Publications BV, 1999).}

Translation of terms that have a technical meaning can lead to misunderstanding. In the OECD Model Tax Convention on Income and Capital ('OECD Model'), Article 5 uses the English term 'agent'. In the French it is 'commissaire'. Avery Jones and Ward point out that this leads to confusion, as the content of the words does not translate exactly.\footnote{J. Avery Jones and D. Ward, 'Agents as permanent establishment under the OECD Model Tax Convention', (1993) 33 European Taxation 154.} Even where such terms are translated, they are often of value only if the reader understands the
context of the right, which may require detailed knowledge of the administrative and commercial systems of the relevant jurisdiction.

4 **Law**

Legal barriers can limit understanding of both content and application of rights. There are problems of definition. What is a tax in one country is not necessarily a tax in another country. What is included in the definition of a right may not be included in another country. More important, a principle that exists and has substantial meaning in one jurisdiction, for example, *l'ordre public* in France, may not even exist in another, such as the UK.

5 **Politics**

There are political barriers to common interpretation of rights. This can be seen in the context of information exchange. Where a state is asked to supply information about its taxpayers and there are concerns that to do so might discourage foreign investment, the rights of parties in the state supplying information may be interpreted strictly so that the information is not supplied. This might be even more likely if competitors for that investment do not exchange information. Conversely, in the context of international cooperation to combat tax evasion, governments may well come under pressure to read down taxpayers’ rights in the interest of obtaining a result.
6 Technology

Technology would not normally impact on the interpretation of the content of rights. However, given the increase in information exchange, interpreting how rights are applied is sometimes dependent on the quality of the information supplied. Appropriate protection of information is only possible if the authorities know what the information is that is being exchanged. This might be relevant, say, in a multi-jurisdictional transfer pricing audit where information is being exchanged. Article 22 of the OECD Convention requires sufficient understanding of the information to maintain appropriate secrecy.

To provide for this type of concern, in the US, for example:

In the case of Routine or Automatic Information Exchanges, the IRS has actively promoted the use of computer readable magnetic media in the exchange of this type of information. In working with its other treaty/TIEA (Tax Information Exchange Agreement) partners, the IRS has endeavoured to enhance the utility of such exchanges through the development and adoption of a uniform set of standards and specifications relating to record layouts, interchange codes and the physical properties of the media.

D Interpretation of Rights in the Model

The clauses in the Model will be translated into domestic law and administrative procedure. It is therefore very unlikely that reference will be made to the Model or its commentary in the interpretation. The position is very different for tax treaties based on the OECD Model
and its commentaries. They remain treaties between countries and are governed in part by international instruments, such as the interpretation articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties. It is under the Vienna Convention articles that the OECD Model and the 1980 UN Model Double Taxation Agreement Convention between Developed and Developing Countries ('UN Model') and their commentaries are usually accepted as aids to interpretation of the treaties.\(^7\)

The aim of the Model is to influence the formulation of policy so that legislation and administration reflect the rights in the Model, translated contextually into the particular jurisdiction. The rights that are embraced will be affected by a range of factors, including those identified above, which will give a slightly different content depending on the jurisdiction. The substance should remain broadly the same, but the effect may differ substantially. For example, the right of appeal in tax matters may have little benefit for a taxpayer on a low income in a jurisdiction where access to the legal system is the province of a minority on higher incomes. In countries with taxpayers on relatively high incomes and facilitated access to the appeal system, it may be of widespread use. The content will also differ where jurisdictions at similar stages of economic development have different legal systems and appeal processes that have very different effect.

There are further interpretation issues specific to the Model. When it comes to interpreting the rights contained in a jurisdiction, the interpretation will depend very much on the form of enforcement. The correlation between the interpretations of rights in different jurisdictions, even when the legal systems are different, is likely to be stronger where the rights are legislated. Legislation is formal and in the tax area not dissimilar. This is apparent from works on comparative taxation.\(^8\) The legal procedures accompanying

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legislation may differ, but the general form and structure of legislation is broadly similar. It becomes more difficult when comparing administrative rights because the administrative systems are more diverse. Even in an area such as the provision of advance tax rulings, which has been driven to some extent by international convergence in the drive to attract foreign investment, there are significant discrepancies in approach.

The meaning of the Model will depend on the type of legal system and the structure and style of the tax system. The different types of legal system, or legal families, have different characteristics. Although Thuronyi suggests that the three main types of tax system are represented by Germany, the United Kingdom and the United States, he points out that both courts and legislatures in jurisdictions represented by each of those styles will adopt sometimes widely differing solutions to the same problem. The economic and social context will also have a substantial impact on the phrasing and interpretation of rights. A complex dispute resolution process suited to an advanced OECD economy will not easily translate to one of the poorer Pacific island nations, where a traditional economic and social infrastructure with its own idiosyncratic dispute resolution mechanisms underpins the tax system. Procedures, which form a large part of the content of the rights in the Model, are particularly open to cultural difference. It is straightforward to say that we should tax capital gains. How it is carried out in an advanced western economy will differ markedly from how it is carried out in a rural agrarian economy with strong communal land ownership. Procedural rights must exist in both, but with strong nuances to cope with the divergent contexts.


D. Sandler and E. Fuks, above n. 75.

V. Thuronyi, above n. 79, chs 1, 2 and 5.

Ibid., p. 9.
As discussed above, the Model will have different meaning and content depending on the words used to implement the rights. In the context of anti-avoidance rules for example, the doctrine of _frans legis_ has no equivalent meaning in common law jurisdictions. However, even in civil law jurisdictions its meaning and content is different. It is therefore important that the drafters of the legislation or rules are clear on the intended content. They should use terminology that will give effect to that content without ambiguity that leads to a reading down of the rights.

The process of interpretation will differ between jurisdictions. For legislated rights it is not just a matter of discerning differences between a more principled civil law approach and a common law approach that examines closely the wording and construction of the legislation itself. The interpretation will depend very much as to how the courts view legislated taxpayers' rights - what classification of legislation it falls into. If it is seen as forming part of the standard law governing administration of taxation then the normal rules of interpretation in that jurisdiction will apply. Where it is acknowledged that the legislation was introduced for a particular purpose, the courts may interpret it in the light of both the historical intent and the purpose of the legislation. In civil law jurisdictions such as Germany, Switzerland and the Netherlands the teleological approach is used to construe the tax law so as to fulfil the legislative purpose. In common law jurisdictions such as Canada, Australia, India and Israel a purposive approach is often used to give a broader construction, particularly in the context of general anti-avoidance rules.

Rules such as general anti-avoidance rules can be seen as a broader type of rule that has an overarching application. Taxpayers' rights should at least be seen in this light. A purposive interpretation is also more likely to support the principles set out in the first part of this chapter, that form the basis for most tax systems.

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84 Ibid., p. 158.
85 Ibid., pp. 159-160.
86 Ibid., pp. 146-147.
A preferred approach to interpretation by taxpayers will be where taxpayers’ rights, although contained in a tax act, are interpreted in the same way as other rights legislation. The European Convention on Human Rights has been incorporated into the legislation of many member countries and the courts have developed a strong teleological approach to interpretation to ensure that Convention rights fulfil their object and purpose. The effect has been that an interpretation ‘that builds on the rules of public international law on the interpretation of treaties’ is incorporated into the interpretative process of the member states.

Different methods of legislative enforcement are discussed in Chapter 5. Whether or not a jurisdiction uses a method that gives stronger protection of taxpayers’ rights clauses than that afforded to other tax law, courts can provide their own reinforcement of the rules through the interpretive method they adopt. This has clearly been the case in maintaining the effect of general anti-avoidance rules. Rishworth et al identify some of the influences on judicial interpretation where courts recognise the special nature of rights clauses and the language used. Although the authors refer to the New Zealand Bill of Rights, which does have special status in law, a number of these influences can apply to interpretation of an ordinary legislative clause. They apply simply where the court recognises a clause as one providing a right and therefore requiring, in its view, a particular approach to its interpretation.

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87 Ibid., pp. 140-141
90 V. Thuronyi, above n. 84, ch. 5. Australia provides illustration. The courts were instrumental in reading down the effect of the general anti-avoidance provision, the Income Tax Assessment Act 1936 (Cth), s. 260. This led to legislative introduction of a much more detailed substitute in Part IVA of the same act. However, soon after Part IVA was introduced, the High Court seemed to reverse its approach to the interpretation of s. 260, in cases still before it, to give it the teeth that the legislature apparently originally intended. The section remained the same but the interpretation went full circle. See I.C.F. Spry, Arrangements for the Avoidance of Taxation (Melbourne, The Law Book Company Ltd, 1972) for an analysis of its original application and J. Wainewright, Australian Income Tax Principles and Policy (2nd edn, Sydney, Butterworths, 1993), ch. 20, for a description of the changes in interpretive approach.
91 P. Rishworth, G. Huscroft, S. Optican and R. Mahoney, The New Zealand Bill of Rights (Oxford, OUP,
The first point they make is that some rights are expressed generally, but will have specific application. The content of a right depends very much on how restrictively it is applied. An interpretation that recognises the importance of giving rights meaning will extend their reach. Administrative review in common law jurisdictions traditionally has been somewhat restrictive in scope. However, both the courts and the legislature have recognised over the years that as modern bureaucracy becomes more complex, there is rationale for extending the scope of administrative review. This recognition has led also to an acceptance by the courts that they will themselves on occasions broaden the scope of judicial review. As they interpret legislated taxpayers' rights, the courts may adopt a similar purposive approach simply because they are interpreting rights.

Rishworth et al point out that rights 'set a benchmark for acceptable governmental conduct and law'. It does not mean that the rights have to be encapsulated in a separate bill of rights to have this effect. It means that when legislation is being interpreted its application should not fall below the benchmark set by the rights. Obviously, that in itself is a matter of interpretation. However, simply articulating rights in law gives them greater emphasis and presence in the minds of judges than when they are only implied. It sets a standard that develops in content and meaning over time. In this sense, Rishworth et al identify rights clauses as either confirmatory or amendatory. By this they mean that rights will either confirm existing values or amend and transform the system through the introduction of rights that have been previously missing or imperfectly realised. An example of the latter was the amendments introduced through the various US taxpayer

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2003), ch 2.
92 Ibid., p. 25.
94 This has arguably been the case in both the UK cases, Associated Provincial Picture Houses v Wednesbury Corporation, [1948] 1 KB 223 and Council of Civil Service Unions v Minister for the Civil Service, [1983] AC 374.
96 Ibid., 31.
97 Ibid., 32.
rights bills in the 1980s and 1990s, including for example, reversing the onus of proof in assessment disputes. 98

A further point made by Rishworth et al, particularly pertinent to common law jurisdictions, is that a legislated right could be interpreted restrictively to coincide with its existing common law meaning or it could be interpreted broadly. 99 A broader reading could widen the interpretation of existing common law rights, extend the scope and effect of the rights, provide more effective remedies, or do a combination of the three. 100 Simply legislating an existing right does provide the opportunity to revisit its interpretation.

The context and broad approach to interpretation are important. However, as Article 3 of the Model in Chapter 9 includes an interpretation clause, it is useful to examine how this should be applied. Here we can draw on the approach taken in New Zealand, where the interpretation clause plays a significant role. Although it is backed by other sections that reinforce the application of the Bill of Rights in instances of potential contradiction, Rishworth et al summarise the methodology applicable specifically to the interpretation clause that flows from the Bill of Rights and the way it has been considered thus far by the courts. 101 Applying the four steps they identify to the Model: 102

1. Is there a protected right that is affected by another enactment? This requires consideration of the scope of the protected right.

2. Would a suggested meaning or purported application of the other enactment be inconsistent with or conflict with the meaning of the protected right? This requires in part exploration of the limits inherent on the protected rights. If there is a potential conflict or inconsistency only then does the next step apply.

98 A. Greenbaum, above n. 55, p. 371.
99 P. Rishworth et al, above n. 91, p. 39.
100 Ibid.
101 Ibid., 133.
102 Ibid.

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3. Is it possible to interpret the potentially inconsistent or conflicting enactment in a way which avoids the inconsistency or conflict?

4. If such an interpretation is possible then that is the meaning that should be adopted. If such an interpretation is not possible only then would a court make a declaration of incompatibility. To the extent that an interpretation is possible that limits the incompatibility with the enactment, that interpretation should be favoured over an interpretation that does not.

This is an approach that is familiar to common law jurisdictions. However, it flows naturally from public international law and the interpretation approach taken to make international treaties as effective as possible. This is particularly the case in the interpretation of human rights instruments. The adoption of an interpretation clause in the Model is explored in more detail in Chapter 5.

E Convergence

Despite the barriers to consistent interpretation across jurisdictions, there are a range of forces, other than economic forces, driving convergence. They include the interrelationship between different legal systems, the common adoption of the principles outlined in this chapter and the wide acceptance of the concept of taxpayers' rights discussed in Chapter 2. It is highly unlikely that there will ever be one tax system. Even at the broadest level and where there is strong economic incentive, the EU provides an excellent example of the difficulties in conforming different tax systems. However, as international investment and world trade become increasingly important to every jurisdiction, there will be elements of convergence. The focus by revenue authorities on improving the efficiency of tax
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administration and procedure has extended across borders. The influence of the IMF and World Bank, discussed in Chapter 2 has encouraged some broad similarity in approach to tax administration. The following chapters will illustrate commonality in approach to tax administration and procedure, where taxpayers' rights are found.

At the level of specific rights there will also be increasing convergence. Although there is seldom one meaning for terms used, a common definition of content develops over time as clauses are interpreted in the light of specific cases. The more sophisticated legal systems begin to reflect in their domestic systems the changes that are encouraged through membership of international agreements that set increasingly higher standards. The framework of rights slowly expands and reinforces those higher standards as a general expectation within any tax administration.

Nonetheless, there will be numerous particular rights where the common definition is not required or is impossible to find given the peculiarities of different legal and tax systems. A common conception of effect will exist at the higher level. The implementation to give that effect will require widely different measures. This does not undermine the argument for a Model.

It is argued that a Model is timely, necessary and relevant as a standard for best practice in tax administration. However, it is important to remember that the Model will be translated into different legal systems. It will not transform them into a uniform set of rules. The similarities may be misleading as the act and effect of translation are likely to change the nature and content of the rights to suit the legal system. Hopefully, the effect of the rights will be the same. The outcome will be to provide the full measure of protection intended by the Model, but in the context of that legal system. It is therefore important to understand at this point that the Model will not resolve differences in tax administration and procedure. That is not its aim. It will rather provide a set of rights that should be given
effect in each tax system. There may be convergence, but that will be because of other forces of change and not the adoption of the Model.

IV CONCLUSION

The formulation of any tax policy is based on underlying principles that shape the subsequent legislation and administrative rules and procedures. The traditional principles used in benchmarking tax systems are almost all relevant to some extent to taxpayers' rights. The Model will reflect the revised definitions identified in the first part of this Chapter in its formulation of rights. They will help to shape the rights to ensure that they fall within a widely accepted policy framework.

Once the rights are formulated and there is proliferation in statutory instruments and administrative rules and procedures around the world, there will be more interest in the comparative interpretation of rights.¹⁰ The jurisprudence of taxpayers' rights will grow and this will assist in the development of a comparative view of the interpretation of taxpayers' rights.¹¹ This may lead to difficulties. For example, assume a jurisdiction with an active court but an undemocratic government or an economy in the early stages of development. An active court could drive the development of rights more quickly than the legislature intended when enacting them. However, this element in the process of convergence provides the momentum for setting an accepted benchmark of good practice in tax law and administration. As seen in Chapter 2, the development of taxpayers' rights should provide substantial benefits for the tax administration as well as taxpayers. Even where the transplant of legislation is sociologically inappropriate, a purposive interpretation by the

¹⁰ The 1990 OECD Survey, above n. 70, was simply an early example of a general desire to compare rights which shows no signs of abating.

¹¹ This can already be seen from such works as H.J. Ault, above n. 79; V. Thuronyi, above n. 84 and D. Albregtsen and H. Van Arendonk, above n. 70.
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courts can redeem the rights clauses and give them meaning that is effective in the
economic, legal, social and cultural context of the tax law for that jurisdiction.103

Although the content of rights might change slightly, it is nonetheless important to
establish a framework of rights that can be used in the review of any system of tax
administration. As discussed in the context of human rights in Chapter 2, there can be a
common understanding of which broad rights are appropriate within a tax system. The test
for a particular jurisdiction is whether a broad right of a particular kind exists. Once that is
established, it is possible to examine its content and application. Although they will vary
with the legal, social, political, economic and cultural environment, the question is whether
the protection is sufficient, or whether there are gaps.

Chapter 2 provided the rationale for a Model. Chapter 3 has demonstrated the
importance of keeping the rights chosen in broad agreement with the principles that
generally underlie tax systems. It has also shown that although interpretation of rights will
cause their content to differ in practice, there will be some convergence over time. It is
these differences depending upon context that emphasise the importance of the Model as a
guide to best practice rather than a particular set of rules. Chapter 4 now analyses the
context which gives weight to the argument that a Model is both timely and beneficial. It
then proceeds to classify the rights contained in the Model in the light of that context.

103 P. Alston, 'A Framework for the Comparative Analysis of Bills of Rights' in P. Alston (ed.), Promoting