CHAPTER 7

TAX ADMINISTRATION AND ADMINISTRATIVE CHARTERS

I INTRODUCTION

The regulation governing tax administration usually determines the structure of the tax system and sets up a tax authority. The rights outlined in Chapters 7 and 8 are often expressed as limitations on its powers. The regulation setting up the tax authority normally also provides it with general powers of administration of the tax system. An understanding of the scope and extent of these general powers will often dictate the way a taxpayer complies with the tax laws. There is a substantial body of literature analysing the inter-relationship between: the revenue authority's exercise of its powers; the civil law, criminal law and purely administrative sanctions available to enforce those powers; and taxpayer compliance.

The relationship between the exercise of administrative powers and voluntary compliance was discussed in Chapter 2. It is outside the scope of this thesis to examine the links between taxpayer compliance and civil and criminal sanctions:1 It is the exercise of the powers of administration and the procedures to effect compliance and impose sanctions that are the focus of this chapter and the next.

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The legal framework for tax administration will necessarily depend upon the broader legal framework and the administrative structure of that jurisdiction. As with all comparative legal analysis it is quickly evident that there are many similarities across jurisdictions. However, these cannot be taken at face value, as local nuances may change the nature and meaning of what on the surface seem alike. The difficulties of cross-jurisdictional interpretation were discussed in Chapter 3. However, a general framework is appropriate and arguably the best form is one organised along functional lines. This is the approach taken in Chapters 7 and 8. As discussed in Chapter 4, the functional approach also determines the type and enforcement of taxpayers’ rights.

The more power and discretion left in the hands of the revenue authorities, generally the greater the proportion of administrative rights. This is prevalent in common law jurisdictions. Many civil law jurisdictions provide a more detailed legislative content to the administration of the tax system and therefore to taxpayers’ rights; the corollary being a reduction in the discretion of the revenue authority. As illustrated in Chapter 5, the nature of rights changes depending on how they are enforced. The analysis in the next two chapters therefore does not favour a particular style of enforcement, but provides an indication of the differences in content that can occur between secondary legal rights and primary and secondary administrative rights and principles of good practice.

It is important to note that ‘content’ does not necessarily mean that rules are spelt out in detail. That is a product of the common law, where principles, such as those set out in Chapter 6, have largely come late to the tax system. Gribich argues forcefully that the civil law concept of providing in legislation the ‘core principles and very basic conceptual

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2 F. Vanistendael, ‘Legal Framework for Taxation’ in V. Thuronyi, ibid., p. 15 provides an analysis of the distribution of tax law making power between the legislative and executive branches of government and between central and local governments.

3 Discussed extensively and strongly recommended in R.K. Gordon, above n. 1, p. 97, which should be given particular weight as it is based on significant experience in designing tax legislation in a range of jurisdictions.

tax framework\textsuperscript{5} gives a degree of legal certainty that reduces significantly the scope of administrative discretion. It does so without necessarily demanding the comprehensive and detailed technical rules covering every eventuality that are so often found in common law jurisdictions.\textsuperscript{6} However, the thrust of Gribich's argument, which is made in the context of harmonisation of European tax law, underlines the difficulties in applying the content of one jurisdiction's rules to another. The analysis of rights in the next two chapters is therefore broadly framed to capture the general principles applicable across jurisdictions.

The nature of the tax system determines where taxpayers' rights are found. Primary and secondary legal rights are usually found in a range of legislation. Some rights are given constitutional protection of a kind discussed in Chapter 6. Others, such as appeal rights and the jurisdiction of courts can be found in administrative law. Some are found in special legislation governing particular subject matter, such as freedom of information legislation. Most are included in those codes, rules or statutes dealing specifically with taxation, whether they form part of public administrative or procedural law (often in civil law jurisdictions) or sit rather uncomfortably as a branch of public law (usually the case in common law jurisdictions).\textsuperscript{7}

The nature of tax law means that there is overlap in any jurisdiction and some aspects of tax administration are governed by a completely different set of rules. The most obvious example is where criminal offences apply to acts in connection with taxation and the criminal law and procedure take precedence over administrative law or the ordinary tax law. The seriousness of criminal charges can introduce generic elements of protection that are not available under general administrative, procedural or tax-specific provisions. They

\textsuperscript{5} Ibid, p. 142.
\textsuperscript{7} For country examples see D. Bentley (ed.), Taxpayers' Rights: An International Perspective (Gold Coast, Revenue Law Journal, 1998) and H.J. Valt, Comparative Income Taxation: A Structural Analysis (London, Kluwer Law International, 1997). A discussion of the approach taken in different legal systems can be found in V. Thuronyi, V. Thuronyi (ed.), above n. 1, ch. 4 and see also para. 6.3 on the organization of tax administration law.
form important elements of the analysis below, but the focus is limited as far as possible to the effect of these provisions on taxpayers.

Gordon suggests that although it is best not to provide special rules only for tax matters where the general laws are applicable and effective, it can be beneficial 'to modify existing law to fit the unique problems inherent in tax administration.' Taxpayers' rights often do fall into this category and are specific to the tax law. Where they have general application to all areas of tax law and administration, Gordon argues that there are important benefits to collecting them in one place within the tax code or primary tax statute. The benefits include ease of access, that they need not be repeated in each section where they apply, and improved uniformity in design and application. The same principles apply to collection of administrative rights in one place and support the use of administrative 'charters' or 'bills' of taxpayers' rights.

II GENERAL POWERS OF ADMINISTRATION

A Autonomy of the Revenue Authority

Fundamental to the operation of the tax system and its administration is that there should be an administrative body charged with the administration of the tax system independent from external interference. The head of the revenue authority should therefore be in the
position of sole responsibility for tax assessment, collection and enforcement, thereby assuring her or his independence.

Concomitant with this level of independence for the head of the revenue authority come high levels of accountability, which are dealt with in the following sections. A basic guarantee of independence can be found in a fixed term of appointment. Bersten notes that this applies to the Australian Commissioner of Taxation, who is appointed for a term of seven years. The appointment is by the Governor-General on the advice of the Prime Minister. But as the term of appointment exceeds that of the Federal Government, it precludes the politicisation of the role: a change in government does not bring with it the right to change the Commissioner. The US Commissioner of Internal Revenue similarly is appointed by the President by and with the consent and advice of the Senate for a five-year term under §7803 Internal Revenue Code.

This principle that the head of the revenue authority has security of tenure, adds to her or his independence. It is important that the scope for removal is limited. Australia restricts removal to instances of proven misbehaviour, mental or physical incapacity, bankruptcy, unapproved paid employment outside the duties as Commissioner, or absence without leave. The US allows removal, however, at the will of the President. Interestingly, Canada has not seen the need to establish details of the position of Commissioner by legislation. The Income Tax Act (RSC 1985, c 1 (5th Supp)) simply states at Section 220:

11 For an excellent analysis of the principles underlying the independence and accountability of the head of a revenue authority, see M. Bersten, 'Independence and Accountability of the Commissioner of Taxation' (2002) 12 Revenue Law Journal, 5 in the context of the Australian Commissioner of Taxation.
12 Ibid, p. 15.
13 Ibid. The Senate term is six years and the House of Representatives only three years in Australia.
14 Taxation Administration Act 1953 (Cth), s. 6C.
15 §7803(a)(1)(C) Internal Revenue Code.
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(1) The Minister shall administer and enforce this Act and the Commissioner of Customs and Revenue may exercise all the powers and perform the duties of the Minister under this Act.

(2) Such officers, clerks and employees as are necessary to administer and enforce this Act shall be appointed or employed in the manner authorized by law.

(2.01) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Act.

Given the experience in developing countries discussed below, this is an instance where the inherent stability and democratic traditions of some democracies plays against them. They do not offer explicit protection of the independence of the position of the head of the revenue authority. Tenure is not assured. Removal can in theory be at the whim of the executive arm of government. Best practice suggests that protection should be put in place. Without protection, there is a danger, however remote, that the tax administration could be administered by an appointee beholden to the political will of the executive.

The reporting relationship of the revenue authority within the executive branch of government is also critical to its independence. The reporting relationship can influence the revenue authority's focus and its method of operation. To counter this, some jurisdictions, such as Montenegro, have placed the tax administration outside the control of a particular ministry, reporting directly to the Executive. This follows the example of countries such as Australia and Canada, where the ATO and Canada Revenue Agency (CRA) report directly to a Minister. However, in countries such as the United Kingdom where Her Majesty's Revenue and Customs (HMRC) falls within the broader responsibility of the Chancellor of the Exchequer, and the United States, where the IRS is a bureau of the

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Department of the Treasury, there is little practical difference in the independence of the revenue authority.

The extent of a revenue authority's autonomy and the powers given to it generally reflect underlying differences in the political structures and systems of public sector administration in countries, as well as longstanding historical practice. In the OECD, for example, it was found in 2006 that just over half of its members had established unified authorities with some degree of autonomy. However, those authorities that comprise single or multiple directorates in the relevant Ministry of Finance do not necessarily thereby lose their independence. The discussion below will demonstrate that it is the substance of independence that is important rather than an organisational form. The 2006 OECD comparative survey does note that autonomy includes some or all of: the power to interpret tax laws; the authority to impose penalties and interest; responsibility for the internal organisation and management of tax operations, including budgetary discretion; responsibility for information technology associated with tax administration; the discretion to establish performance standards; and responsibility for personnel. It is beyond the scope of this thesis, but it would be useful to explore through detailed case study which powers and responsibilities should be given to a revenue authority as a matter of priority to best establish its independence. So many revenue authorities have now undergone substantial reform either unilaterally or with external assistance, that there would be sufficient material for analysis.

Not all jurisdictions have clear delineation of roles and it is worth identifying how independence should be achieved where a revenue authority either falls within a Ministry or

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21 Ibid., and Table 1, p. 31.
22 Ibid., pp 11-12.
has its own minister. It was clearly articulated in Australia by the then Minister for Revenue and Assistant Treasurer.\textsuperscript{21}

Of course, the Commissioner of Taxation has absolute autonomy in the actual administration of the tax laws.

Perceptions of a non-partisan administration of the taxation laws are as fundamental to successful tax systems (and hence successful government) as are non-partisan judicial systems to the rule of law and sustaining a democratic society.

For this and other reasons, the Commissioner of Taxation has - and will continue to have - absolute discretion in the day to day administration of the tax laws.

At the same time, democratic government is held accountable by society for the taxation system that it imposes and so must be able to deliver a system that accords with democratically expressed preferences.

This is the part of tax administration that is within the Government's domain - tax administration policy - and this is my challenge as Minister for Revenue.

The Government's roles in tax administration include:

- putting in place a robust tax design framework that generates tax laws that are unambiguous, responsive to the legitimate concerns of taxpayers, and conducive to effective administration;
- adequately resourcing the tax administration function; and
- ensuring that appropriate accountability and review mechanisms are in place to identify and remedy any problems in tax administration.

The distinction of roles between the executive and the revenue authority becomes more important in countries where the rule of law is not as well established. Any form of separation of authority becomes a useful means to increase transparency simply by virtue of the requirement to share information among a wider group. Even this is predicated on the assumption that the tax system is not simply an instrument of executive authority, which entrenches the systemic opportunity to act arbitrarily. At the point where application of the rule of law and observance of the constitution become uncertain, no structural measures will have much effect in protecting taxpayers' rights.\textsuperscript{24} However, with increasing recognition of the rule of law, any incremental measures to protect the autonomy of the tax system and its administration are also likely to enhance taxpayer protection.\textsuperscript{25} This is particularly so, given the recognition in those jurisdictions where the revenue base is under threat, that revenue collection will only increase if it is perceived as fair by the taxpayers. It was and remains a notable component of the strategy of the Pakistan Central Board of Revenue.\textsuperscript{26} The Tanzania Revenue Authority, as part of its effort to reform its tax system has identified its mission, "To be an effective and efficient tax administration which promotes voluntary tax compliance by providing high quality customer services with fairness and integrity through competent and motivated staff."\textsuperscript{27}

Even in a country such as Zimbabwe, suffering from democratic and economic collapse, the Zimbabwe Revenue Authority has maintained as its banner headline on its


\textsuperscript{25} Underlined by the explanations in the IMF Code, above n. 12, and particularly 18-21.


\textsuperscript{27} Tanzania Revenue Authority, <www.tanzania.go.tz/index.htm>, 2 November 2006.
website, 'Transparency, Integrity, Fairness: We are here to serve'. It underscores the fact that revenue authorities are generally aware of how important transparency, integrity and fairness are to effective tax administration, compliance and enforcement. Their independence from any autocratic or corrupt exercise of power by government is a critical first step in establishing their authority to implement those principles. This highlights an important issue. There are layers in the application of the rule of law and the general principles that should underlie a tax system identified in Chapter 3.

Certain aspects of a country's legal system may be subjugated to the autocratic will of the ruling elite. However, other aspects will often remain in place while some or many of the social and economic structures of society remain operative. As has been seen in countries from Nazi Germany to Zimbabwe, contract and family law may be observed even during incidences of genocide. In the same way a revenue authority could operate effectively, observing taxpayers' rights, even where there was blatant abuse of human rights. More often, it is likely that the corruption will seep down, at least to some extent, into the bureaucracy. Alternatively, the bureaucracy may be more heavily infected with corruption than the higher level political and judicial organs. The aim of the Model here should be to bolster the position of those fighting against corruption and seeking to implement and enforce taxpayers' rights.

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31 For a deeper analysis of this aspect of corruption see D. Kaufmann, M. Gonzales de Asis and P. Dininio (eds), Improving Governance and Controlling Corruption: Towards a Participatory and Action-Oriented Approach Grounded in Empirical Rigor (World Bank Institute, 2001), <www.worldbank.org/wbi/governance/pubs/improving.html>, 31 October 2006. This volume represents much of the material used by the World Bank Institute in its core course on fighting corruption.
Few countries claim to be undemocratic. The opposite is the case and most undemocratic countries make a point of publicising their democratic credentials.\(^3^2\) If the model is widely accepted and espouses basic principles of administration that reinforce taxpayers' rights, there is likely to be a similar claim by revenue authorities that they observe those principles. As noted above, the mission statements of revenue authorities, ranging from the United States to Zimbabwe, already incorporate a strong service focus. The pressure to provide service and integrity in the tax system is further driven by the demand for foreign direct investment. This is illustrated by a paper issued in 2003 by the American and European Union Chambers of Commerce on the need for reform of the Armenian tax system if foreign direct investment was to be sustained, let alone increased.\(^3^3\) It concluded:\(^3^4\)

Moreover, in the view of almost [all] respondents, the tax administration and the implementation of the tax system in Armenia on the part of the tax authorities is inefficient, inequitable and unprofessional, with widespread corruption and harassment of foreign investors and corporations that try to abide by the laws.

The key results of these weaknesses according to the participants of our survey are that:

1. Tax collection is not as high as it could or should be;
2. Foreign Direct Investment (FDI) into Armenia is significantly discouraged, with a very serious negative effect on the economy.

\(^3^2\) There are numerous agencies charting democratic development. For a listing of many of the better recognised, see the Democracy Research Guide, The National Endowment for Democracy, <www.ned.org>, 1 November 2006.


\(^3^4\) Ibid., p. 3.
Over time it is possible that the pressure for reform to attract foreign direct investment will succeed. Alternatively, other internal and external factors identified in Chapter 4 are likely, again over time, to ensure that the tax system exhibits the principles necessary for it to operate more effectively. It is interesting to note de Jantscher and Bird’s comments on Latin America that,\(^\text{35}\)

The 1980s – in so many ways a lost decade for a Latin America burdened with external indebtedness and characterized by macroeconomic instability – turned out to be a decade of achievement for the reform of tax administration.

Nonetheless, the experience of sub-Saharan Africa is particularly instructive in this context. As aid decreased there was an increased need to raise revenue.\(^\text{36}\) To counter inefficient, incompetent and corrupt tax collection and with the encouragement of the international donor community Rakner and Gloppen note that a number of African countries introduced semi-autonomous revenue authorities.\(^\text{37}\) The aim was to make better paid, resourced and trained individuals responsible for revenue collection and to limit direct political intervention in collection operations.\(^\text{38}\) This is consistent with the need for independence from political interference, transparency and accountability. Initial improvements in Uganda, Tanzania and Zambia showed increased levels of efficiency in

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revenue collection from existing taxpayers.\textsuperscript{39} However, Raimer and Gloppen conclude that there remained a failure in these countries to increase revenue collection or to apply the law uniformly, which derived from a lack of political will both to cease interfering and to allow transparency and accountability within the tax administration.\textsuperscript{40} Furthermore, even among those taxpayers paying tax there remained a lack of trust manifested in low levels of voluntary compliance.\textsuperscript{41} Bird argues that:\textsuperscript{42}

A tentative conclusion might be that, to put it in extreme terms, countries that have the will, strategy, and resources to reform tax administration probably do not need independent revenue authorities and those in which these critical ingredients are lacking are unlikely to be successful even if they create such an authority.

One of the issues identified by Bird is the revenue authority's resources. A solution to the problems faced by revenue authorities in countries with very limited resources is to outsource a number of functions that are particularly costly to implement. Computerisation and the significant possibilities from developments in technology provide a major incentive to use them as much as possible in the tax administration process. However, the capital cost of investing in the infrastructure, together with the personnel, training, operational and maintenance costs are beyond the capacity of many countries. Ramírez Acuña and Martinez-Vazquez have identified the advantages and disadvantages of outsourcing elements of the tax administration process to the private sector.\textsuperscript{43} Both argue that the

\textsuperscript{39} L. Raimer and S. Gloppen, above n. 36.
\textsuperscript{40} Ibid., pp. 9-18.
\textsuperscript{41} Ibid., p. 15.
\textsuperscript{42} R.M. Bird, above n. 38.
decision-making role of a revenue authority cannot be outsourced.\(^{44}\) However, the information components, in certain circumstances, can be outsourced effectively and efficiently, subject to stringent safeguards, without undermining either the integrity or the perceived integrity of the tax system.\(^{45}\) As outsourcing becomes increasingly common, taxpayers need the assurance that there is no undermining of the autonomy of the revenue authority. There is a long history of tax farming in Europe.\(^{46}\) It is clear from the discussion above that it is no more conducive to creating a fair tax system today than it was in 1794, when 28 tax farmers were guillotined during the French Revolution.\(^{47}\)

Patronage is equally insidious in undermining the integrity of the tax system. Rakner and Gloppen note that it has seriously inhibited tax collection from corporations in Zambia.\(^{48}\) It would extend to similar patrimonial systems.\(^{49}\) Overcoming the problem of patronage such that members of parliament and others in executive authority do not have sufficient influence over tax administration is necessarily a hard fought issue. However, it is a requirement to ensure basic protection of taxpayers' rights. Democratic countries operate under the general principle that a member of parliament cannot also hold office as a civil servant (excluding positions as a government minister or a member of the armed forces).\(^{50}\) This should also be reflected in the Model.

Although democratic government contributes strongly to the implementation of a fair and equitable, certain and simple, efficient and effective tax system, it is not a prerequisite. If the Model is implemented, even in form only, it is likely that incrementally it will become more substantive. One of the first steps along that road is the recognition that taxation has been shown to be less effective when imposed and implemented by fiat of a

\(^{44}\) Ibid.
\(^{45}\) Ibid., particularly pp. 378-392 and p. 397.
\(^{46}\) N. Ferguson, above n. 29.
\(^{47}\) Ibid., p. 95.
\(^{48}\) L. Rakner and S. Gloppen, above n. 36, p. 12.
\(^{49}\) F.D.A.M. Luoga, above n. 24.
\(^{50}\) G. Cauley, Members of Parliament: Law and Ethics (Sydney, Prospect, 2000), p. 57 et seq. for a history of the Westminster system. See also, UK, House of Commons Disqualification Act 1975 and Commonwealth of Australia Constitution Act 1900, s. 44(v) and (v).
narrow ruling elite. The relative autonomy of the revenue authority to administer the tax system independent from external interference is therefore a particularly important initial requirement, but it must be combined with the will, strategy and resources to be effective. The Model can only provide the framework for an effective tax system: it does not provide the political will to implement it. Independence alone, however, is insufficient. It is also necessary to make the revenue authority accountable.

B **Oversight and Accountability of the Revenue Authority**

Administration of tax law necessarily involves the exercise of direct statutory powers and the exercise of administrative discretion. The powers and discretion are usually conveniently vested in the head or heads of the revenue authority, with the power to delegate that authority. In common law jurisdictions the general delegation of power can include lawmaking, provided the delegation is exercised in accordance with the delegated authority. In civil law jurisdictions delegated authority is far more highly regulated. Vanistendael writes that in the European continental tradition:

This power of the executive branch of government to execute or implement the tax laws is based on a general or specific delegation of power in the constitution. Tax regulations issued under such delegation of power are limited to the implementation of the law itself and are valid only within the limits of those laws. What can be determined by executive decree are matters of detail, procedure, and administration.

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51 For example, Australia, Income Tax Assessment Act 1936 (Cth), s. 8; Canada, B.J. Arnold, 'General Description: Canada' in H.J. Ault, above n. 27, p. 25, p. 33; and New Zealand, Tax Administration Act 1994, s. 6A.

52 For example, in the UK there is an increasing tendency to legislate broad principles to provide a 'skeletal' framework within which Ministers enact secondary legislation. H. Fenwick and G. Phillipson, *Text, Cases & Materials on Public Law and Human Rights* (2nd edn, Cavendish Publishing Ltd, 2003), p. 291 argue that this 'may also be seen as a significant erosion of parliamentary sovereignty'.

53 E. Vanistendael, above n. 2, p. 57. See also, Y. Grbich, above n. 4.
regulation that extended the scope of the tax law, changed its conditions, or altered the meaning of the law would have to be declared illegal and inapplicable by the courts.

In the analysis that follows it will soon become clear that these differences are seen most clearly in that taxpayers’ rights in common law jurisdictions tend to be administrative rights. In civil law jurisdictions they tend to be secondary legal rights. Each right is important, but its precise nature and content must adapt to the type of jurisdiction in which it is found. That said, it will be seen that there are several areas where there can be gaps in taxpayer protection because of it. This reinforces the IMF view, based on its experience in developing countries that, in addition to the principle that all tax must be imposed by law, ‘the administrative application of tax laws should be subject to procedural safeguards’.14

The existence of procedural safeguards is critical to the integrity of the tax system.15 Timronyi, based on his experience in supervising tax reform projects as Senior Counsel in the IMF, identifies six areas in tax administration that can seriously undermine its effective operation:56

1. Corruption among tax officials, which he describes as ‘rampant in a number of developing and transition countries, with other countries occupying intermediate positions’;
2. A lack of knowledge and competence of tax officials in understanding and applying the tax law;57
3. Low investment in the public service providing salary and conditions that cannot attract or retain competent staff;

14 IMF Code, above n. 12, p. 2.
15 Ibid., 1.2.
56 Above n 4, p. 207.
57 Discussed further in Publication of Rules in Chapter 6.
4. Where tax officials are subject to physical danger because of their role, particularly in tax collection;
5. Where tax audits are over-formalistic in their design and administration without any probing of the legal and economic issues in a taxpayer’s tax return; and
6. If tax refunds are not automatically given or are difficult to extract from the government.

As discussed in Chapter 4 taxpayers’ rights can only flourish in environments where the rule of law is observed. Luoga suggests that this is particularly so in the context of patrimonial systems that are prevalent in developing countries. Ghai notes the concerns of foreign direct investors over unaccountable and undemocratic government, which leads to poor policy and inefficient administration.

This returns to the point that a form of taxpayers’ rights is ineffective if it is not observed in the application of the tax law and its administration. However, if there are at least formal safeguards in place there is something for either or both of the tax administration and taxpayers to work towards in making the safeguards effective.

It is not within the scope of this discussion to identify the best structure for effective tax administration. However, Thuronyi has raised issues particularly in relation to developing countries and countries in transition, which tie in with the discussion in the previous section. Authors such as Ishimura have concerns in relation to developed...
countries. In the previous section we noted that it is important that the revenue authority is autonomous from political interference. This may be through the clear separation of role, function and responsibility within a government department, or through the semi-autonomous revenue authority model.

Flowing directly from the arguments supporting non-interference, it is equally essential that there is some form of external oversight as a check or balance on the role of the revenue authority.62 The nature of this oversight will depend on the structure of government. In some democracies, the oversight has been limited until recently to reporting annually to parliament or a responsible minister in the government. In Australia, for example, the ATO provides a comprehensive annual report to the Minister for Revenue, who has Federal Cabinet responsibility for the department and the report must be laid before both houses of Parliament.63 In many democracies, the parliament can regularly make enquiries into the tax system through its committees, which may or may not arise out of the annual reporting process. In the US, for example, this falls under the Ways and Means Committee in the House of Representatives and the Finance Committee in the Senate.64 In South Africa, the Portfolio Committee on Finance of the National Assembly reviews the activities of the South African Revenue Service under Section 55(2) of the Constitution.65 This is a common approach.

Bersten raises the question as to whether this form of accountability leaves the government with enough power over the administration of the tax laws.66 The minister responsible has no power of direction over an autonomous revenue authority.67 The revenue authority is usually forbidden by criminal penalties from disclosing any confidential information.

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62 IMF Code, above n. 12, is concerned largely with the independent checks and balances that ensure the integrity of government finances, including taxation.
63 Income Tax Assessment Act 1936 (Cth), s. 14.
65 See e.g., the reports of the Parliamentary Monitoring Group, <www.pg.org.za/>, 6 January 2006.
66 M. Bersten, above n. 13, p. 21.
67 Ibid.
information about taxpayers to the minister. However, Bersten points out that the nature of the partnership between minister and revenue authority ensures that there is sufficient leverage for each party to achieve its own requirements from the relationship. On the government side:

- the revenue authority budget is allocated through the parliamentary process;
- it is able to amend tax laws;
- it is able to allocate and remove administrative responsibilities from the revenue authority;
- it can influence the revenue authority through the many other government departments that interact operationally with the revenue authority; and
- it has the ultimate power of appointment of the head and sometimes other senior members of the revenue authority.

The revenue authority's major strength is its independence. Given the dependence of most governments on tax revenues, the revenue authority is in a powerful position of influence simply because it collects the budgeted revenue and implements both revenue legislation passed by parliament and subordinate revenue legislation introduced by the executive. Its input into revenue policy and the design of new laws can be critical in making them effective. Where the system works well, there should be a balance between the government and the revenue authority which ensures both independence and accountability.

In some jurisdictions, the demand for accountability requires more than the higher level oversight provided by a responsible minister or an oversight committee of parliament.

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68 Ibid., p. 22. This is discussed further in Chapter 8. It is vital that taxpayers have complete confidence that their confidential tax information cannot be revealed to parliament or to any other third party.
69 Ibid.
70 Ibid.
71 Ibid.
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It focuses on more detailed governance issues including the strategic function and operation of the tax system. Appointing independent members of a body specifically responsible for oversight of the tax system is most common. For example, in response to this requirement, Canada constituted a Board of Management with 15 members, nominated by the provinces and territories. External appointees bring a broad range of backgrounds and expertise to the strategic and organisational management of the CRA. A similar external expertise is brought to the Board of HMRC in the United Kingdom by the non-executive directors. In 1998, following continuing public concerns about the operation of its IRS, the United States introduced an IRS Oversight Board as part of the popularly known Taxpayer Bill of Rights 3. This approach has been followed in those jurisdictions seeking to cope with major reform of their systems in response to fiscal crises. For example, Pakistan’s 2001 reform strategy included increased autonomy for the Central Board of Revenue subject to oversight by a Supervisory Council comprising a range of government officials and the possibility of co-opted private sector representatives.

Where the government does not want to appoint independent members to a governing body there are other options. In response to criticism of the tax system, in 2000 the Australian Government introduced the Board of Taxation, with no reporting relationship to the Commissioner of Taxation, but whose advisory function to the Treasurer included:

- the quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design;

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72 A. Greenbaum, "United States Taxpayer Bills of Rights 1, 2 and 3: A Path to the Future or Old Whine in New Bottles?" in D. Bentley, above n. 7, p. 347. An Act to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service and for other purposes Pl 105-206. See generally, OECD, above n.20, pp. 12-14.
73 Central Board of Revenue, above n. 26.
improvements to the general integrity and functioning of the taxation system;

research and other studies commissioned by the Board on topics approved or
referred by the Treasurer; and

other taxation matters referred to the Board by the Treasurer.

The Board of Taxation recommended the establishment of the office of Inspector-General of Taxation as a further independent observer of the tax system, to advise the government on tax matters and, in particular, to identify systemic problems in tax administration. The Minister for Revenue agreed to the establishment of the office as an independent taxpayer advocate and adviser to the Government, stating that her key priorities were to improve the responsiveness of the tax system to the genuine concerns of taxpayers and to ensure that the tax system is fair. The position was established in 2003 as an independent position appointed by the Governor-General with an annual reporting requirement to Parliament to ensure transparency.

Some argue that oversight boards or similar bodies can themselves be designed to constrain the operations of the revenue authority in favour of taxpayers. Greenbaum argued that the IRS Oversight Board was 'a legislative invitation to second guess and thus restrict the Commissioner in the performance of her or his job of running the IRS'. If this were the case, the Board would not be applying appropriate governance principles. Oversight must go hand in hand with appropriate use of oversight powers and responsibilities and any external oversight body should not be open to capture by special

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77 The Press Release, ibid., outlines the rationale for the appointment and its scope.
78 A. Greenbaum, above n. 72, p. 367.
interest groups intent on pursuing a particular agenda. As Highfield and Baer noted in the context of Russian tax administration in 2000:

A balance should exist between the rights of the taxpayer, whose rights are ensured by due process and fair treatment, and the tax administration, which should have powers sufficient to administer and enforce the tax law in an efficient and even-handed manner.

It is not sufficient simply to establish external oversight of the revenue authority. It is essential that the oversight is exercised in accordance with principles of good governance. Creating a balance between independence and accountability is difficult, but is the key to an effective revenue authority. Majone urges a note of caution in designing an autonomous yet accountable system. He argues that regulators and agencies are often criticised for shortcomings in this regard, 'which in many cases are due less to their actions or omissions than to the way the enabling statutes have been written.' The effectiveness of the oversight of the revenue authority is therefore predicated on its design. This in turn is highly dependent on the jurisdictional context and existing government structures andaccountabilities. Oversight of the revenue authority cannot be held hostage to a system where the existing structures would make it meaningless. But it is equally pointless introducing independence and accountability measures that bear no relationship to the system in which they are supposed to operate.

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Good governance is essential to the effective administration of a tax system. The oversight body, whatever form it takes, should apply good governance principles if that is their role, or comment on how well good governance principles are being applied if their function does not involve governance. The revenue authority’s senior management and board, if there is one, should also be acutely conscious of and seek to implement good governance principles.

In their discussion of existing taxpayer protection, Baker & Groenhagen note the paucity of measures taken to set international governance standards for taxation. This can be explained in the context of the extensive worldwide focus on the development of governance principles generally, and the numerous guidelines applicable to government institutions specifically. The broader focus on governance has impacted on tax administration through a variety of associated documents that are applicable to revenue authorities. There is considerable overlap between governance and service standards. The former are concerned with the governance of the tax administration and its organisation. The latter focus on the standards of service provided by the administration to taxpayers, but in a number of areas, such as compliance, as discussed in Chapter 2, this impacts directly on risk management and therefore governance. However, it is important to distinguish between the two and this section deals with principles of governance and the next section deals with public service standards as principles of good practice.

Although ‘there is a high correlation between governance quality and per capita income’, attempts to improve governance in the public service is not restricted to OECD

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countries. For example, countries such as India, through the Department of Administrative Reforms and Public Grievances and Malaysia, through an extensive public service quality program, have developed highly sophisticated governance principles and public service standards for application in non-OECD environments. One of the most useful benchmarks was that issued by the Independent Commission for Good Governance in Public Services in the UK, *The Good Governance Standard for Public Services* (Good Governance Standard). It sets out six major principles:

1. Good governance means focusing on the organisation's purpose and on outcomes for citizens and service users.
2. Good governance means performing effectively in clearly defined functions and roles.
3. Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour.
4. Good governance means taking informed, transparent decisions and managing risk.
5. Good governance means developing the capacity and capability of the governing body to be effective.
6. Good governance means engaging stakeholders and making accountability real.

The detailed content of each principle is reinforced by sub-principles and explanations. They are all applicable to some extent to the governance of a revenue authority. Where there is no specific governing body, the fifth principle would apply to those that act in that

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84 See the comprehensive website of Citizens' Charters in Government of India <www.goicharters.nic.in>, 6 November 2006.
87 Ibid., p. 5
88 Ibid., pp. 5-26.
city for the revenue authority as the external oversight body. It is important for parliamentary committees or other such bodies responsible for external oversight to realise the responsibility they have in assessing and challenging the standards of governance exercised by the revenue authority. The Good Governance Standard includes as an Appendix sample questions to aid in this task.89

In assessing the need for revenue authority oversight it was noted that Thuronyi raised six areas where tax administration could be seriously undermined. By properly applying the Good Governance Standard to a revenue authority exhibiting those characteristics it is likely that most, if not all, would be addressed. A combination of strong ethical organisational values, effective risk management, good quality information, an emphasis on accountability and the provision of an environment in which high quality staff can perform well and deliver effective services90 would act to reduce corruption significantly. Lack of knowledge and competence of tax officials would be overcome by the principle that good governance means engaging the staff as stakeholders and making accountability to them as employees real. The principle gives a responsibility to ensure that staff recruitment, training and motivation are maintained at a high level to meet the objectives of the revenue authority. The same principle would require the oversight body to fight against low investment in staff with the provision of poor wages and conditions. The combination of achieving the revenue authority's objectives, the engagement of taxpayers as stakeholders and accountability to taxpayers, would overcome procedural failures identified by Thuronyi. What could not be overcome simply by good governance is where tax officials are subject to physical danger because of their role. However, the engagement of taxpayers as stakeholders and striving to achieve a perception that the tax system is fair, should go some way to reducing taxpayer aggression towards the system.91

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89 Ibid., Appendix B, p. 31.
90 Ibid., p. 24.
Where public service standards have become ingrained into the culture of the revenue authority, it is more likely that taxpayers' rights will be upheld. This will usually only be possible where the governance principles support the integrity and effective operation of the tax system. In that sense, as in the areas of substantive law, the introduction of the Model is but one aspect of the legal and administrative environment that is necessary to support a genuine recognition and application of taxpayers' rights. As identified above, the more entrenched the rule of law, the more likely that there is an environment in which governance principles can be observed. Whether they will be observed depends in addition on the accountability and transparency of government. However, as noted in Chapter 2, improved governance and increased engagement do not necessarily flow from socio-economic development. Kaufmann argues that:

the process of economic development does not in itself automatically ensure improved governance, civil liberties and control of corruption. The causality direction is from improved governance (including civil and political liberties) to economic development, and not vice versa.

His research shows that it requires specific intervention by the state and the formulation and implementation of policies on governance to establish the climate both for human rights to be observed and economic development to occur.

Moving from the general governance principles of The Good Governance Standard for Public Services, a specifically relevant and internationally acceptable set of principles, many of which are directly applicable to the governance of a revenue authority, is the 2001 IMP
The IMF Code is in four sections. Section 1 focuses on the 'Clarity of Roles and Responsibilities'. It applies to government generally. Applying it specifically to the administration of the tax system, it supports a number of the arguments already made in this Chapter.95

1.1 The government sector should be distinguished from the rest of the public sector and from the rest of the economy, and policy and management roles within the public sector should be clear and publicly disclosed.

1.1.1 The structure and functions of government should be clearly specified.

1.1.2 The responsibilities of different levels of government, and of the executive branch, the legislative branch, and the judiciary, should be well defined.

1.1.3 Clear mechanisms for the coordination and management of budgetary and extrabudgetary activities should be established.

There are further points requiring a clear delineation of the roles of government, nongovernmental public sector agencies and the private sector. The first points set out above support the clear separation of responsibilities between the three arms of government. As discussed earlier, this requires that the role of the revenue authority as an arm of the executive be clearly specified. It impacts directly on a number of the rights considered below (and a number of those set out in Chapter 6), which are designed to

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95 IMF Code, above n. 12.
96 Ibid., p. vii.
prevent the revenue authority from usurping the role of either the legislature or the judiciary.

The requirement that the policy and management roles within the public sector be clear and publicly disclosed protects the revenue authority from interference by other government departments. In regimes where corruption is rife, we have seen that it was a significant reason for the introduction of semi-autonomous revenue authorities. From that discussion, it was also clear that part of the failure of semi-autonomous revenue authorities to make a longer-lasting impact in countries such as Uganda, Zambia and Tanzania was because there were no clear mechanisms for the coordination and management of budgetary activities.\(^9\) It ties in with the next sub-section of the IMF Code:\(^10\)

1.2 There should be a clear legal and administrative framework for fiscal management.

1.2.1 Any commitment or expenditure of public funds should be governed by comprehensive budget laws and openly available administrative rules.

1.2.2 Taxes, duties, fees, and charges should have an explicit legal basis. Tax laws and regulations should be easily accessible and understandable, and clear criteria should guide any administrative discretion in their application.

1.2.3 Ethical standards of behaviour for public servants should be clear and well publicized.

A clear legal and administrative framework for the tax system is fundamental both to principles of good governance and taxpayers' rights. In particular, the necessity for an explicit legal basis for all taxes was discussed in Chapter 6 and is set out in Article 4 of the Model. Article 4 also incorporates the requirement that any administrative discretion

\(^9\) 1. Rakner and S. Gloppen, above n. 36, p. 11.
\(^10\) IMF Code, above n. 12, p. vii.
should be governed by clear criteria. The requirement that tax laws and regulations should be easily accessible and understandable ties back to the principles of certainty and simplicity discussed in Chapter 3. It is important to note that the explanations of 1.2.2 in the IMF Code also extend to cover ‘Taxpayer Rights and Openness of Administrative Decisions to Independent Review’.

The list of rights mentioned provides further support for the Model and the reference in the IMF Code is noted elsewhere in this thesis in the context of the discussion of individual rights.

One of the most significant principles included in the IMF Code is the requirement for clear and well publicized ethical standards for public servants. This should include all employees of the revenue authority, even where the revenue authority is autonomous and its employees are not public servants. Ethics cannot be legislated. However, the substantive tax law includes a range of penalties for breach of major ethical requirements, such as the requirement of revenue officers to maintain the confidentiality of taxpayers’ records and information. Nonetheless, it is a principle of good governance to maintain an environment in which revenue authority employees are acutely aware of the ethical responsibilities which they bear. These should also be articulated for the benefit of taxpayers in any document setting out their administrative rights and obligations. This is discussed further in the next section and as a general principle of administration in Chapter 8.

There is limited direct applicability of the remainder of the IMF Code to the revenue authority in the context of taxpayers’ rights. However, the basic principles surrounding the effective fiscal operation of a government are directly applicable to the revenue authority as it contributes towards and participates in that operation. They are basic governance
principles and taxpayers have the right to expect that they will be implemented in order to protect the fabric, structure and operation of the tax system.

Those principles that are particularly relevant to taxpayers' rights are:

2.1 The public should be provided with full information on the past, current, and projected fiscal activity of government.

2.2 A commitment should be made to the timely publication of fiscal information.

3.3 Procedures for the execution and monitoring of approved expenditure and for collecting revenue should be clearly specified.

3.3.4 The national tax administration should be legally protected from political direction and should report regularly to the public on its activities.

4.1 Fiscal data should meet accepted data quality standards.

4.1.3 Specific assurances should be provided as to the quality of fiscal data. In particular, it should be indicated whether data in fiscal reports are internally consistent and have been reconciled with relevant data from other sources.

4.2 Fiscal information should be subjected to independent scrutiny.

4.2.1 A national audit body or equivalent organization, which is independent of the executive, should provide timely reports for the legislature and public on the financial integrity of government accounts.

4.2.3 A national statistics agency should be provided with the institutional independence to verify the quality of fiscal data.

There is a focus on the full provision of information to the public and the monitoring of the quality and integrity of that information. It extends the principle of transparency, articulated in Chapter 2 in the context of the design and implementation of tax rules, to the fiscal activity of the government. Although not directly within the management control of the revenue authority, the principles cover the broader fiscal activity in which the revenue

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103 Ibid., p. viii-x.
authority plays such a critical part. If Kaufmann is correct, improved governance will lead to economic development.

The principles apply to the autonomy of the revenue authority discussed above. However, as was pointed out, autonomy must exist in fact and not just on paper. Bird notes that without the political will not to interfere there is little to stop such interference occurring in many developing countries. Articulation of governance principles does at least increase awareness that they exist. This is reinforced where there is a national audit authority that is independent of the executive and which provides regular, comprehensive and accurate reports on the fiscal health of the country. As these reports are made to parliament and are accessible by the public generally, they begin to entrench the concept of accountability. Widening the tax net in countries where it has been sectoral and where the base is narrow involves more taxpayers in the tax system and there is an increasing propensity to give voice to concerns they might have.

However, if the audit, monitoring and reporting activities are to be effective the quality and integrity of data must be assured. This is always going to be difficult in developing countries, but it is an area of particular focus, for obvious reasons, by donor countries. The IMF Code notes, for example, that the IMF is systematically developing a data quality assessment framework that is designed to be a flexible, comprehensive tool that can be used in a variety of country situations by experts and non-experts alike.

External accountability is reinforced by the requirement to provide accurate figures for

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105 D. Kaufmann, above n. 94.

106 R.M. Bird, above n. 38.


108 IMF Code, above n. 12, p. 65.
Chapter 7

anything from trade negotiations to ensuring as high a sovereign credit rating as possible. Accuracy in one area of government can then flow through to other areas.

Although the IMF Code gives little explanation of the procedures that should be 'clearly specified' for collecting revenue in 3.3, this is a very important point. It identifies the procedural implementation of the tax laws and regulations imposing tax. The procedures will be both formal and informal. Many are included in the substantive tax law. Others are administrative and included in internal manuals and handbooks. In the explanation of 1.2.2, with the requirement that clear criteria should guide any administrative discretion, the IMF Code does state that 'the material the tax agency uses in applying the tax laws (e.g., manuals and legal opinions) should be publicly available'. Applying this as a principle of governance fits neatly with the underlying principles of certainty and simplicity identified in Chapter 3. It also overcomes the concerns in tax systems where there is little transparency.

For example, Ishimura writes of Japan, that 'tax procedures are extremely opaque so that many decisions are made arbitrarily by the tax authorities'. Arbutina, writing from a Croatian perspective, makes the point that for countries in transition major tax reform 'is enough to cause an administrative nightmare', which makes transparency difficult during the transitional period. However, he also reinforces the point made by Rakner and Gloppen, that tax reform increases democratic accountability simply by virtue of raising taxpayer concerns that they are facing or likely to face increased taxation.

To comply with the IMF Code, the Model must reflect the requirement for clear specification of procedures for collecting revenue. It does so by requiring a legal basis for taxation and administrative discretion, together with criteria for the exercise of that

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109 Ibid., p. 19.
113 H. Arbutina, above n. 111, p. 150.
discretion. It also requires that taxpayers should have access to information affecting any aspect of the procedures governing tax administration, collection and enforcement. The Model must emphasise the importance of governance principles generally and it is appropriate to require that the revenue authority should ensure compliance in all areas of its responsibility with the IMF Code. A future development may be to include a model set of governance principles as an appendix to the Model.

D Principles of Good Practice

Historically, public service standards have been the instruments used to govern public service administration. The Australian Public Service standards, for example, were introduced in 1922 and updated in 1999. The OECD noted the extent of public service Citizen's Charters in its 1996 review. The general detail of public service standards governing administration of government departments, including the revenue authority, forms the background to parts of the Model. Public service standards are relevant to the governance, management and operation of the revenue authority. However, the detailed content is generally applicable to any government department (and often also to any public service body whether public or private). This Section therefore focuses on identifying those standards that are directly relevant to the Model.

In doing so, it analyses both general and specific principles of good practice relevant to tax administration. As discussed in Chapters 4 and 5, principles of good practice generally comprise administrative rights and goals that are prima facie unenforceable. These are not exactly congruent with the inclusions in most revenue authority documents setting

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112 Public Service Regulations 1922 (Cth), updated by the Public Service Act 1999 (Cth).
113 OECD, Responsive Government: Service Quality Initiatives (OECD, 1996), <www.oecd.org/findDocument/0,2350,en_2649_34275_1_119699_1_1_37405,00.html>, 10 January 2006.
Chapter 7

out taxpayers' rights as these often include enforceable rights and also describe, in broad terms, taxpayers' obligations. However, as the documents issued by revenue authorities are the product of extensive research and are widely accepted, they should form the starting point for the principles of good practice. Secondary legal and primary administrative rights that are contained in revenue authority documents are discussed in Chapter 8.

The principles of good practice provide the practical administrative framework to support the Model's implementation. As such, the potential and justifiable variation in any compilation of principles of good practice makes it impossible to provide a model set of principles. What is more useful is to provide an illustration of recognised examples of high quality principles of good practice.

It is also very important to separate the unenforceable administrative rights and goals from the enforceable rights in the Model. The separation underlines the fact that any right included in the Model must be substantially enforceable. If the two were combined in the Model, there would be a strong temptation to issue a generic document from the revenue authority including both enforceable and unenforceable rights, but without providing for the enforcement of the enforceable rights. The rationale would be that if a right is included in a document issued by the revenue authority the right has therefore been given to taxpayers and no further action is necessary. The reality is that rights requiring legislation or the exercise of specific administrative discretion do not exist until the relevant legislation is passed or administrative discretion is exercised. It is easy to fudge the implementation of taxpayers' rights and the Model must avoid facilitating fudging of this kind.

Before examining the documents issued by individual revenue authorities, it is useful to take a step back and examine the work done in this area by the OECD. The OECD Centre for Tax Policy and Administration has produced two relevant documents: Principles
of Good Tax Administration – Practice Note (GAP001) and Taxpayer Rights and Obligations (GAP002). 

OECD GAP001

GAP001 is concerned with the principles of good tax administration. Much of its focus is on promoting high standards of international cooperation among tax administrations. There is much less detail on the principles applicable to domestic tax administration. GAP001 is consistent with the principles set out in Chapter 3, including aspects of the neutrality principle. As an OECD document, it puts forward OECD policy. Much of it is uncontroversial and represents accepted best practice. Some points may draw criticism from a wider audience. For example, revenue authorities are encouraged to support the arm’s length principle and the OECD guidelines on transfer pricing. They are also encouraged to manage issues relating to tax competition and tax havens by identifying risks and elaborating administrative strategies. However, GAP001 encapsulates most of the principles that should underpin a tax administration intent on protecting taxpayers’ rights. Indeed, GAP001 is designed to provide the basis for GAP002, which sets out taxpayers’ rights and obligations.

GAP001 begins with an introductory section on the goals and challenges of revenue authorities. 117 Consistent with the principles of good governance discussed above, it highlights the importance of a revenue authority understanding its purpose and goals, ensuring that its use of resources is the most effective and efficient to achieve them. 118 It is assisted in doing so if it uses a combination of technology, benchmarking and testing to

116 Available at <www.oecd.org>, 10 January 2006.
117 GAP001, 3.
118 Ibid., para. 2.
improve its public image and the organisation of its work processes.\textsuperscript{119} The language of ‘management’ as a discipline has permeated revenue authorities relatively recently. Traditionally the concept of a strategic plan and a business model for a revenue authority was not well known. This has changed dramatically and the best run revenue authorities are models of good management practice. At the 2004 6th International Conference on Tax Administration in Sydney, it was instructive that the keynote addresses by the Australian Commissioner of Taxation and the New Zealand Commissioner of Inland Revenue both began by setting out the strategic goals of their respective organisations.\textsuperscript{120} The Australian Commissioner of Taxation went on to describe the ATO Business Model.\textsuperscript{121}

Arguably, it should be taken for granted that the management of a revenue authority will follow accepted best practice. That is implicit in the Good Governance Standard discussed in the previous section. However, as is apparent from research into developing countries, the tax administration is often starved of the capacity and resources to achieve this. Barbone et al note that during the 1990s, 37.2% of World Bank projects had as one of their objectives the strengthening of administrative institutions and 16.3% of projects the strengthening of administrative capacity.\textsuperscript{122} Until a revenue authority achieves at least a minimal level of good management practice, supported by the resources necessary to give effect to its strategic plan, it is unlikely to be able to observe the basic Model. Arguably, a revenue authority in this position is not a fully operational revenue authority and the Model should not be diluted to cater for this kind of tax administration. Rather, whether the basic Model can be properly implemented is a benchmark for revenue authorities to show that they have reached a minimum operational standard to run their tax administration.

\textsuperscript{119} Ibid.


\textsuperscript{121} Ibid., p. 3.

A clause requiring adequate funding for the revenue authority as a budget priority is therefore appropriate within the Model. It may be ignored or paid lip-service. But to have such a clause in the legislation setting up a revenue authority ensures that it is at least recognised as important to effective tax administration.

GAP001 identifies the primary goals of a revenue authority as promoting voluntary compliance, developing strategies to deal with non-compliance and addressing the opportunities and challenges of globalisation. This is achieved by carefully managing and promoting good relationships with the key stakeholders in the tax system: taxpayers, employees of the revenue authority and other revenue authorities. The management of these relationships takes place in a context of ‘clear, simple and “user-friendly”’ administrative systems and procedures, an ability to adapt to change in the business and legislative environment, and careful domestic and global risk management.

Many of the principles set out in GAP001 are dealt with elsewhere in the Model and often constitute legislative or administrative rules within a tax system. Most revenue authorities will incorporate the remaining principles of good tax administration outlined in GAP001 into other parts of their strategic planning documentation and management principles and processes. Without addressing these principles, even if it is at a lower level in some instances than GAP001, or uses a different approach, it is unlikely that a revenue authority can operate effectively in an increasingly interactive global tax environment.

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123 GAP001, above n. 117, pp. 3-4.
124 Ibid.
125 Ibid., para. 4.
126 Ibid., pp. 3-4.
The rationale for encapsulating administrative rights and broader taxpayers' rights in an administrative charter was set out in Chapter 4. Article 6 of the Model states that, 'All rules applicable in the tax system shall be compiled and published accurately and in a form that is accessible to all users'. Paragraph 21 of GAP002 reinforces the importance of accessibility, emphasising the importance of summarising and explaining a taxpayer's rights and obligations in plain language so as to make 'such information much more widely accessible and understandable'.

A charter generally contains rights and obligations. Most are derived from administrative and legislative rules dispersed across the tax system. The advantage of a charter is to draw together those that are most important for taxpayers to know when dealing with their tax affairs. It often also allows the revenue authority to articulate a sense of its culture and values to taxpayers. As emphasised in Chapter 2, taxpayers' rights and equally, taxpayers' charters, must be shaped to fit the individual context of each jurisdiction. The point made in Para. 23 of GAP002 is critical: 'In drawing up a taxpayers' charter a jurisdiction must properly reflect their own policy and legislative environment and their own administrative practices and culture'. A jurisdiction without a charter does not necessarily respect taxpayers' rights any less than one with a charter. This is self evident if one examines the charters on the websites of revenue authorities in jurisdictions where there are documented case studies of corruption or revenue mismanagement.

Even in jurisdictions where taxpayers' rights are widely accepted, a charter is not essential. The point made in GAP002 at Para. 23, is that it is the underlying practice that is important. The publication of those practices in accordance with Article 6 of the Model can take place in different ways. In two articles on the subject, James, Murphy and Reinhart argue that the UK Taxpayer's Charter was something of a failure as an initiative and has
been left to atrophy. The articles argue that to be successful the process of formulating a Charter should follow the Australian model. A key difference was that the Australian Taxpayers' Charter was formulated following systematic preparation, a review of previous experience and widespread consultation. The ATO then adopted the Charter values as its own so that they became inculcated across the organisation, feeding into its Compliance Model and later reflected in an 'Integrity Framework', which sets out the ATO's underlying behaviours, values and ethics. Subsequent reviews of the Australian Taxpayers' Charter have shown that the ATO has largely succeeded in this approach.

This analysis suggests, therefore, those jurisdictions that wish to introduce successful Taxpayers' Charters or similar documents should ensure that they incorporate into the implementation process at least two important steps. The first is to ensure that there is wide stakeholder input into the formulation of the Charter and how it is to be implemented. The Australian experience showed that stakeholders did not need to agree with the process for it to succeed. The second is to ensure that the culture of the revenue authority is changed over time so that the Charter reflects the way the revenue authority operates. The longitudinal surveys of taxpayers' views of the Taxpayers' Charter in Australia clearly show that Charters can become living documents.

Taxpayers' Charters can be effective but need not exist for taxpayers' rights to be protected. They do represent a useful means of complying with the need to publish the taxpayers' rights and obligations contained in the tax rules of a jurisdiction. They also

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130 M. D'Ascento, 'Living our values', paper presented at the 7th International Tax Administration Conference (Sydney, Australia, 2006), p. 7.


provide an opportunity to publish those principles of good practice that are unenforceable legislative or administrative rules. GAP002 represents a comprehensive if not exhaustive example of a taxpayers’ charter of rights and obligations. Rather than designing a competitive example, it makes sense for the Model to include GAP002 in an appendix.

3 Identifying Principles of Good Practice

Principles of good practice comprise those principles that are not legal or administrative rights. As noted in Chapter 5, it is their direct or indirect enforceability which provides them with substance that goes beyond aspiration.

A principle which states that revenue officers will deal courteously with taxpayers has no legal definition or content unless the revenue officer behaves so badly that her or his action becomes delictual, tortious or criminal. It has no real content at all if when a taxpayer complains that he or she has been treated discourteously, there is no means of redress and there are no consequences. However, the principle has real content if when the taxpayer complains, the complaint is taken seriously, it is investigated, and can lead to disciplinary action against the offending revenue officer. It has even more substance if the performance of the manager of the relevant unit is also affected by the outcome of the complaint investigation. This would occur if he or she is judged against a key performance indicator that measures the incidence of complaints of this kind and adverse or favourable consequences can result. For example, an annual bonus might depend on meeting targets across a range of such key performance indicators.

The use of performance indicators to assess tax administration and individual revenue officers is becoming more common. James, Svetalekth and Wright provide a useful survey of the literature and note the broad correlation between the success of taxpayers'
Part of the success relates to the development of a response by the revenue authority to taxpayer concerns over real or perceived breaches of the charter.\textsuperscript{134}

However, not all actions of the revenue authority can be measured directly. Where there is direct measurement, albeit only through a performance indicator, there is administrative enforcement and the right is a secondary administrative right. For example, a service standard might commit the revenue authority to respond to all emails within 3 days and to provide an answer to all email requests within 14 days unless the matter is complicated and the taxpayer has been notified of the delay and given an alternative timeframe for a response. If this standard is not met, a taxpayer may then be able to follow the complaints procedure through a number of steps, all the way to the ombudsman. Most taxpayers would not take complaints of this nature through to the ombudsman. However, the possibility makes it a secondary administrative right. Most taxpayers would be satisfied with acknowledgement of the error and an apology. This latter step is a principle of good practice.

The difference is often blurred. Performance indicators can measure at a less specific level. For example, measurement of the incidence of complaints is common. However, that does not provide a specific enough measure to ensure that a revenue officer apologises when it is warranted. It becomes ridiculous and counter-productive to take the measures down to the level of recording when an apology was required and recording to ensure that it was given. This is where staff training and the importance of the values which imbue the


\textsuperscript{134} TNS Consultants, above n. 131.
operation of the revenue authority come into play. Principles of good practice moderate the behaviour of revenue officers as they interact with each other and with taxpayers. They govern how revenue officers go about their daily work.

The range of principles of good practice is as broad as the different behaviours that might be used to implement any of the facets of tax administration. The principles enumerated here do not include most of those that are incorporated into revenue authority values statements. Rather, they include those that focus specifically on the interaction between the revenue officer and the taxpayer.

This section sets out those more commonly found in GAP002 supplemented by those taken from taxpayers' charters from around the world. It does not include any rights that are dealt with in Chapter 8 as legal or administrative rights although many of the principles are derived from or form part of those rights. In some jurisdictions some of the Chapter 8 rights will not have legal or administrative enforcement. For the purposes of the Model, they should have such enforcement and are therefore considered in that context.

The principles of good practice are self-explanatory and do not include additional commentary.

Revenue authorities should:

1. Act professionally in all dealings with taxpayers.
2. Treat taxpayers with courtesy, consideration and sensitivity.
3. Listen to taxpayers' concerns.
4. Consult with key stakeholders or their representatives before significant changes are introduced.

See M. D'Alessandro, above n. 130.

The Charters of New Zealand <wwwIRD.govt.nz>, 1 October 2006; Canada <www.cra-arc.gc.ca>, 1 October 2006; South Africa <www.sars.gov.za>, 1 October 2006; and Australia <www.ato.gov.au>, 1 October 2006, are particularly helpful and provide the basis for most of the principles listed.
5. Take account of a taxpayer's particular circumstances, especially individual, cultural and special needs, to the extent allowed by law.

6. Treat taxpayers as being honest in their tax affairs unless they act otherwise.

7. Minimise the costs of complying with tax obligations.

8. Provide assistance to taxpayers to help them understand and meet their tax obligations.

9. Make sure publications and other communications are clear, accurate, helpful and easy to understand.

10. Keep looking for new and better ways to give taxpayers advice and information.

11. Conduct general education programs for both existing and potential taxpayers.

12. Provide taxpayers with easy access to and identification of contact details.

13. Be accessible and attend to enquirers, whether by telephone, mail or in person, within specified times designed to minimise delay.

14. Deal with urgent requests without delay, whether by telephone, mail or in person.

15. Answer telephone calls promptly and without unnecessary transfer.

16. Make an effort to ensure the taxpayer is put in touch with the appropriate person the first time.

17. Try to get all aspects of interaction with taxpayers right first time by making best use of all of the information available.

18. Follow through on what they say they will do.

19. Ensure that their staff are well trained, competent and up-to-date with changes in the law that affect their roles.

20. Strive to provide quality service across the organisation.

21. Apologise for errors, fix them quickly and explain what went wrong and why.

22. Make it clear that taxpayers can question the information, advice and service they are given and inform them of options available for resolving disagreements.
Monitor their performance in living these principles through collection of information and regular surveys, which are made public and used internally for continual improvement.

III CONCLUSION

This Chapter and the next adopt a functional analysis of taxpayers' rights. As discussed in earlier chapters, the nature of each right depends in part on the nature of its enforcement. However, this Chapter has demonstrated that the very existence of any rights is largely dependent on the proper functioning of the tax system, which in turn, depends upon the effectiveness of the revenue authority. The particular context of each jurisdiction and its system of law and administration determines the powers and discretion given to the revenue authority. Nonetheless, there are certain critical elements that will govern the effectiveness of the tax system and a significant gap in any of these areas leaves the system open to abuse, ineffectiveness or both.

The most fundamental taxpayers’ rights are congruent with the basic rights of the citizen (or tax resident) to good government. In the tax context, adherence to the IMF Code provides a broad framework of fiscal integrity necessary for an effective tax system. It has been shown that there are strong arguments supporting the benefits of improved governance of fiscal and revenue areas. Intervention in the system and the formal implementation of policies on governance should lead both to an increase in foreign direct investment and economic development.

An effective revenue authority is, of course, critical to the success of any government. A government’s programs rely on revenue. A government can implement laws to raise the revenue required, but this will only happen if there is effective assessment.
and collection of tax and enforcement of the tax laws. This Chapter has identified a number of elements fundamental to an effective revenue authority and the safeguarding of taxpayers' rights.

The structure of the body responsible for the general powers of administration of the tax system, whether autonomous or semi-autonomous, is not as important as its independence from external interference. The head of the revenue authority should have security of tenure to ensure he or she does not face removal at the whim of the executive. The position should have the sole responsibility for revenue administration, with a reporting relationship that is non-partisan and does not allow executive interference.

Accountability is nonetheless vital. Tax administration should be characterised by transparency, integrity and the application of the principles of good governance. This requires oversight by groups that are not captured by special interests, but can ask the hard questions essential to maintain best practice. Oversight may be by way of such entities as legislative or executive committees, audit bodies, oversight boards with independent membership, statutory oversight positions or a combination of these.

However, the analysis also shows that without appropriate investment in revenue administration: autonomy and accountability are somewhat meaningless. Corruption and incompetence are rife where there is low investment in resources and personnel. Particularly in developing countries, investment has to be intelligent and appropriate to the environment. This might mean outsourcing aspects of the administration, such as information technology. But to safeguard taxpayers' rights and ensure that there is no corruption in the process, there must be stringent safeguards.

Equally important is appropriate training and development of revenue personnel. They need to have the knowledge to move beyond a formalistic interpretation of the rules to a broader understanding of the aspects of the tax rules that they are implementing. Only then can they apply them appropriately in accordance with principles of good practice to
ensure effective compliance. Revenue officers need to understand and adopt a culture imbued with the values that will encourage taxpayers to comply voluntarily with the tax rules. For this the officers need training and a commitment to the values espoused by senior management.

Value driven statements of good practice are published by most revenue authorities, often in the form of Taxpayers' Charters. They generally include a statement of enforceable rights protected elsewhere. However, they also identify the attitude and approach that will be taken by the revenue authority and its officers in the administration of the tax system. By themselves these charters are worth little. However, if they are accompanied by the systemic protection designed to ensure independence, accountability and good governance, they are valuable. Not only do they articulate to stakeholders what they can expect in their relations with the revenue authority, but they give benchmarks against which the revenue authority can be judged. They are even more effective where they are accompanied by performance indicators.

Particularly for those rights that are no more than principles of good practice and are simply incapable of enforcement, performance indicators can provide feedback on how well intangible values are being given effect. In modern administration, feedback on perceptions or other indirect measures of performance, such as the number of complaints received, can play a significant role in guiding improvements. They also encourage transparency, articulate a performance commitment to stakeholders in the system and communicate the values that are so important to the good relationships that make the system work well. This Chapter lists the most widely used principles of good practice that are included in most charters of taxpayers' rights. They are included in an Appendix to the Model, with part of GAP002, which provides an example administrative charter of taxpayers' rights prepared by the OECD.
Chapter 6 set out the primary legal rights essential to the existence of an effective tax system. Chapter 7 has provided the framework for the tax administration and the principles that should govern its operation both at the structural level and in the implementation of its underlying values. Chapter 8 now gives a functional analysis of the legal and administrative rights that ensure the proper administration of the tax system. The whole provides an effective guide to best practice in tax administration.