'Taxpayers’ Rights

Theory, Origin and Implementation

Duncan Bentley
Table of Contents

Preface xvii
Table of Cases xix
Table of Statutes, Treaties & Revenue Rulings xxiii
Table of Abbreviations xxvii

Chapter 1
Introduction 1

1. Background 1
2. Purpose 6
3. Outline 7
4. Limits and Assumptions 9

Chapter 2
The Rationale for a Model 11

1. Introduction 11
2. Taxation and Rights 12
3. Taxation, The State and the Difficulty of Relativism 17
# Table of Contents

4. A Practical Solution and a Model of Taxpayers' Rights 20  
5. The Problem of Diverse Tax Systems 23  
6. Disadvantages and Advantages of a Two-Tier Model 28  
7. Is a Model of Rights Realistic? 34  
7.1 Changes in Approach to the Limits 35  
7.2 National Limits 37  
7.3 International Limits 40  
7.4 Conclusion 44  
8. Should the Model Include Taxpayers' Obligations? 44  
9. What Should Be the Basis For Rights Chosen? 48  
10. What is the Incentive for States to Adopt Taxpayers' Rights? 49  
11. Conclusion 56  

Chapter 3  
Principles And Interpretation 59  

1. Introduction 59  
2. Basic Principles 60  
2.1 Deriving a Common Meaning 64  
2.1.1 Equity and Fairness 65  
2.1.2 Certainty and Simplicity 67  
2.1.3 Efficiency 71  
2.1.4 Neutrality 73  
2.1.5 Effectiveness 74  
2.2 Maintaining the Balance 75  
3. Interpretation of the Content 75  
3.1 Introduction 75  
3.2 Trends Leading to Blurred Definitions 76  
3.3 Barriers to Interpretation 78  
3.3.1 Mechanism for Enforcement 79  
3.3.2 Nature and Type of Legal System 80  
3.3.3 Language 81  
3.3.4 Law 82  
3.3.5 Politics 82  
3.3.6 Technology 83  
3.4 Interpretation of Rights in the Model 83  
3.5 Convergence 89  
4. Conclusion 90
# Table of Contents

## Chapter 4
The Context and Classification of Taxpayer’s Rights  

1. Introduction 93  
2. The Context for a Model: Expanding Government 94  
3. The Context for a Model: Increasing Protection 103  
4. An Overview of Types of Rights 107  
   4.1 A Classification 110  
   4.2 Application 112  
5. Classifying Taxpayers’ Rights 112  
   5.1 Enforceable Taxpayers’ Rights: Primary Legal Rights 113  
      5.1.1 Constitutional Protection 113  
      5.1.2 Supranational Protection 117  
      5.1.3 Legislative Protection 122  
   5.2 Enforceable Taxpayers’ Rights: Secondary Legal Rights 123  
   5.3 Enforceable Taxpayers’ Rights: Primary Administrative Rights 129  
   5.4 Principles of Good Practice: Secondary Administrative Rights 131  
   5.5 Principles of Good Practice: Administrative Goals 133  
6. Conclusion 136

## Chapter 5
Enforcement of Rights  

1. Introduction 139  
2. Legislative Enforcement 140  
   2.1 Level of Enforcement 140  
      2.1.1 Constitutional Provisions 141  
      2.1.2 Entrenchment 144  
      2.1.3 Protection Through Interpretation 146  
      2.1.4 Pre-Legislative Scrutiny 154  
         2.1.4.1 The Need for Pre-Legislative Scrutiny: An Australian Case Study 155  
         2.1.4.2 Recommendations 157  
      2.1.5 Ordinary Legislation 163  
   2.2 Conclusion 165  
3. Administrative Mechanisms and Enforcement 166  
   3.1 Introduction 166
Table of Contents

3.2 Definitions 173  
3.2.1 Negotiation 173  
3.2.2 Conciliation 175  
3.2.3 Arbitration 177  
3.3 Application: Developing the Australian Taxpayers’ Charter to Enhance Dispute Resolution and Voluntary Compliance 178  
3.3.1 The Social Conflict Model 179  
3.3.2 Conflict Escalation Before the Charter 180  
3.3.3 Settlement and the Problem of Escalation 181  
3.3.4 The Effect of Conflict Escalation on Taxpayers 183  
3.3.5 Achieving Taxpayer Compliance: Reducing Conflict Escalation 185  
3.4 The Charter Framework 186  
3.4.1 A Problem-Solving Approach to Contain Escalation 188  
3.4.2 Design of the Charter Dispute Resolution System 192  
3.5 The Charter Model 194  
3.6 Analysis 198  
3.6.1 Prevent Unnecessary Conflict Through Notification, Consultation and Feedback 199  
3.6.2 Create Ways of Reconciling the Interests of those in Dispute 201  
3.6.3 Build in ‘Loop-backs’ to Negotiation 203  
3.6.4 Provide Low-Cost Alternatives Where Negotiation Fails 204  
3.6.5 Create Sequential Procedures Moving from Low-Cost to High-Cost 205  
3.6.6 Provide the Necessary Motivation, Skills and Resources to Allow the System to Work 205  
3.6.7 Additional Principles 207  
3.7 Conclusion 210  
4. Conclusion 212

Chapter 6
Analysis of Primary Legal Rights 213

1. Introduction 213  
2. Primary Legal Rights 216  
   2.1 Tax Must be Imposed by Law 230  
   2.2 Publication of Rules 239
Table of Contents

2.3 Non-Retroactive Rules 232
2.4 Certainty 238
2.5 Understandable Rules 239
2.6 Contradictory Rules 242
2.7 Rules that Cannot be Obeyed 242
2.8 The Right to Pay no More than the Correct Amount of Tax 243
2.9 The Right Not be to Taxed Twice 244
2.10 Non-Discrimination 244
2.11 Proportionality 247
3. Conclusion 249

Chapter 7
Tax Administration and Administrative Charters 251

1. Introduction 251
2. General Powers of Administration 254
   2.1 Autonomy of the Revenue Authority 254
   2.2 Oversight and Accountability of the Revenue Authority 263
   2.3 Principles of Good Governance 269
   2.4 Principles of Good Practice 278
      2.4.1 OECD GAP001 279
      2.4.2 OECD GAP002 and Taxpayers Charters 282
      2.4.3 Identifying Principles of Good Practice 284
3. Conclusion 287

Chapter 8
Analysis of Secondary Legal and Administrative Rights 291

1. Introduction 291
2. Administrative Principles 292
   2.1 The Exercise of Discretion 292
      2.1.1 The Nature of Discretion 292
      2.1.2 A Framework for the Exercise of Discretion 295
      2.1.3 Criteria Governing the Exercise of Discretion 297
   2.2 The Principles of Reasonable Time and Reasonable Notice 306
   2.3 The Principle of Fairness in Administrative Action 307
   2.4 The Principles of Publication, Dissemination and Education 309
## Table of Contents

2.5 The Principles of Assistance and Providing for Special Needs 310
2.6 The Principles of Acting Ethically and Professionally 312
3. Information Gathering, Audit and Investigation 313
   3.1 General Information Gathering 318
      3.1.1 Secrecy or Confidentiality Provisions 319
      3.1.2 Gathering Information from Taxpayers 322
      3.1.3 Gathering Information from Third Parties 323
      3.1.4 Exchange of Information with Other Revenue Authorities 325
         3.1.4.1 Authorization 327
         3.1.4.2 Scope 327
         3.1.4.3 Guidelines and Procedures 328
         3.1.4.4 Equivalent Protection to the Home State 328
         3.1.4.5 Confidentiality of Information 330
   3.2 Audit and Investigation 331
      3.2.1 The Audit Model 331
      3.2.2 The Audit Process 335
      3.2.3 Search and Seizure 339
      3.2.4 Representation and Privilege 342
      3.2.5 Privilege Against Self-Incrimination 345
4. Assessment 347
   4.1 Advance Rulings 348
   4.2 Assessment to Tax 351
5. Sanctions and Enforced Collection 354
   5.1 Sanctions 354
   5.2 Enforced Collection 359
6. Objection and Appeal 363
   6.1 Appeal and Natural Justice 363
7. Conclusion 371

### Chapter 9

#### A Model of Taxpayers’ Rights 373

1. Introduction 373
2. Model of Taxpayers’ Rights 375
   2.1 Chapter 1: Scope and Definitions 375
      2.1.1 Article 1 375
      2.1.2 Article 2 375
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2</td>
<td>Chapter 2: Parliamentary Protection and Judicial Interpretation</td>
<td>375</td>
</tr>
<tr>
<td>2.2.1</td>
<td>Article 3</td>
<td>375</td>
</tr>
<tr>
<td>2.2.2</td>
<td>Article 4</td>
<td>376</td>
</tr>
<tr>
<td>2.3</td>
<td>Chapter 3: Primary Legal Rights</td>
<td>376</td>
</tr>
<tr>
<td>2.3.1</td>
<td>Article 5</td>
<td>376</td>
</tr>
<tr>
<td>2.3.2</td>
<td>Article 6</td>
<td>377</td>
</tr>
<tr>
<td>2.3.3</td>
<td>Article 7</td>
<td>377</td>
</tr>
<tr>
<td>2.3.4</td>
<td>Article 8</td>
<td>378</td>
</tr>
<tr>
<td>2.3.5</td>
<td>Article 9</td>
<td>378</td>
</tr>
<tr>
<td>2.3.6</td>
<td>Recommended Rights</td>
<td>379</td>
</tr>
<tr>
<td>2.3.7</td>
<td>Article 10</td>
<td>379</td>
</tr>
<tr>
<td>2.3.8</td>
<td>Article 11</td>
<td>379</td>
</tr>
<tr>
<td>2.4</td>
<td>Chapter 4: General Powers of Administration</td>
<td>380</td>
</tr>
<tr>
<td>2.4.1</td>
<td>Article 12</td>
<td>380</td>
</tr>
<tr>
<td>2.4.2</td>
<td>Article 13</td>
<td>380</td>
</tr>
<tr>
<td>2.4.3</td>
<td>Article 14</td>
<td>382</td>
</tr>
<tr>
<td>2.4.4</td>
<td>Recommended Rights</td>
<td>383</td>
</tr>
<tr>
<td>2.5</td>
<td>Chapter 5: Information Gathering</td>
<td>383</td>
</tr>
<tr>
<td>2.5.1</td>
<td>Article 15</td>
<td>383</td>
</tr>
<tr>
<td>2.5.2</td>
<td>Article 16</td>
<td>384</td>
</tr>
<tr>
<td>2.5.3</td>
<td>Recommended Rights</td>
<td>386</td>
</tr>
<tr>
<td>2.6</td>
<td>Chapter 6: Audit and Investigation</td>
<td>386</td>
</tr>
<tr>
<td>2.6.1</td>
<td>Article 17</td>
<td>386</td>
</tr>
<tr>
<td>2.6.2</td>
<td>Article 18</td>
<td>386</td>
</tr>
<tr>
<td>2.6.2.1</td>
<td>Audit</td>
<td>386</td>
</tr>
<tr>
<td>2.6.2.2</td>
<td>Search and Seizure</td>
<td>386</td>
</tr>
<tr>
<td>2.6.2.3</td>
<td>Representation and Privilege</td>
<td>389</td>
</tr>
<tr>
<td>2.6.3</td>
<td>Recommended Rights</td>
<td>390</td>
</tr>
<tr>
<td>2.7</td>
<td>Chapter 7: Assessment</td>
<td>390</td>
</tr>
<tr>
<td>2.7.1</td>
<td>Article 19</td>
<td>390</td>
</tr>
<tr>
<td>2.7.2</td>
<td>Article 20</td>
<td>391</td>
</tr>
<tr>
<td>2.7.3</td>
<td>Recommended Rights</td>
<td>392</td>
</tr>
<tr>
<td>2.8</td>
<td>Chapter 8: Sanctions and Enforced Collection</td>
<td>392</td>
</tr>
<tr>
<td>2.8.1</td>
<td>Article 21</td>
<td>392</td>
</tr>
<tr>
<td>2.8.2</td>
<td>Article 22</td>
<td>392</td>
</tr>
<tr>
<td>2.8.3</td>
<td>Recommended Rights</td>
<td>393</td>
</tr>
</tbody>
</table>