

Tax – it's time for change

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**Taxpayer protection under the
European Convention on human rights:
lessons for Australia?**

Associate Professor Justin Dabner

Taxpayer protection under the European Convention on human rights: lessons for Australia?

Introduction

- The intersection of tax law and human rights
 - Administrator over-reach and taxpayer rights
 - The taxpayers' charter
 - Inspector General of Taxation 2013 priorities
 - Human rights protection
 - European Convention on Human Rights and the European Court of Human Rights ("ECHR")
 - A blueprint to resolve Australian tax controversies?
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Protecting taxpayers' rights in Australia

Avenues available:

- Part IVC of the Taxation Administration Act 1953
 - Administrative Decisions (Judicial Review) Act 1977
 - S.39B of the Judiciary Act 1903
 - ATO complaints system
 - Ombudsman
 - Inspector-General of Taxation
 - Freedom of Information Act 1982
 - CDDA scheme
 - Privacy Act 1988
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Protecting taxpayers' rights in Australia (cont)

Are these adequate?

- Non-reviewable decisions: oral advice, withholding tax, interim audit reports, accountants' advices
 - Recent example: Macquarie Bank v FCT
 - Taxpayers' Charter and the rise of soft law
 - Co-operative compliance and practical compliance
 - What happens when common sense is lacking?
 - The inadequacy of the common law rights: Harris v DFCT
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Protecting Human Rights in Australia

The bill of rights controversy

Ad hoc legislation: eg privacy laws and anti-discrimination laws

National Human Rights Consultation Committee 2009, the *Human Rights (Parliamentary Scrutiny) Act* 2011 and the Parliamentary Joint Committee on Human Rights

International human rights principles:

- an aid to statutory interpretation?
 - influence on the Common law
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The International Human Rights framework

Universal Declaration of Human Rights

International Convention on Civil and Political Rights (“ICCPR”) and the

International Convention on Economic, Social and Cultural Rights (“ICESCR”).

Ratified in Australia but no force of law

Human Rights Committee

European Convention on Human Rights and the ECHR

European Convention on Human Rights and Taxation

Domestic courts and the ECHR as a last resort

Particular rights relevant to taxation:

- *Right to property (Article 1 of the 1st Protocol)*
- *Right to a fair trial (Article 6)*
- *Non-discrimination (Article 14)*
- *Right to privacy (Article 8)*

Some interpretation principles:

- *Margin of appreciation*
- *Autonomous concepts, effectiveness and essence of the right*
- *Strict limitations*
- *Necessity*
- *Proportionality*
- *Individual rights*
- *Living instrument*
- *Legitimate expectations*
- *Evidence and burden of proof*

Dichotomy in the tax jurisprudence: tax policy v procedural complaints

Conclusion

A bill of rights for Australia?

A bill of taxpayers' rights for Australia?

The European Convention and Australian tax controversies:

- mass marketed tax schemes,
 - the tax advisor strike,
 - delayed refund payments,
 - high net worth individuals' investigations,
 - excessive taxation of superannuation contributions,
 - the accountants' papers concession,
 - non-binding advices,
 - threats and interim reports
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