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**Resolving Australian tax controversies
of the future: does the European
Convention on Human Rights suggest a
better way?**

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Resolving Australian tax controversies: does the tax the ECHR suggest a better way?

Introduction

- **Administrator over-reach and taxpayer rights**
 - **The taxpayers' charter**
 - **Inspector General of Taxation review**
 - **Human rights protection in Australia**
 - **European Convention on Human Rights (“ECHR”) and the European Court of Human Rights (“ECtHR”)**
 - **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***
 - ***Public Governance, Performance and Accountability Act 2013***
 - ***Privacy Act 1988***
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Protecting taxpayers' rights in Australia (cont)

Are these adequate?

- **Non-reviewable decisions: oral advice, access to accountants' advices**
 - **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

No bill of rights

Ad hoc legislation: eg privacy 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

The International Human Rights framework

**The Universal Declaration of Human Rights and the
International Conventions on Civil and Political Rights and
on Economic, Social and Cultural Rights**

Human Rights Committee

ECHR and the ECtHR

ECHR and Taxation

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)**

Primary interpretation principles:

- **Margin of appreciation**
- **Proportionality**

Tax jurisprudence controversies:

- **Tax policy and state sovereignty**
 - **Ordinary tax matters and the fair trial mandate**
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Application to Australian controversies

Non-binding advices (access to accountants' opinions)

Mass marketed tax schemes

Delayed refund payments

Excessive taxation of superannuation contributions

High net worth individuals, risk based audits and threats

The tax accountants' strike

The collection of disputed tax

Miscellaneous instances of no review (eg revision of rulings, demands for withholding tax, failure to issue a ruling)

Conclusion

What prospects of a taxpayers' or citizens' bill of rights?

Adequate protection for taxpayers under a citizens' bill?

ECHR lessons:

- **State sovereignty and excessive taxation**
- **Article 6 and ordinary tax matters**
- **Article 6 and tax investigations**

Systemic issues and tax oversight

A final caveat
