

The Institutional Framework of Taxation in Australia

1. Introduction

The Australian Taxation System is one of the most complex in the world and is made up of approximately 125 taxes including Commonwealth taxes such as Income Tax, Capital Gains Tax, Fringe Benefits Tax and Goods and Services Tax, just to name a few. There are many different organisations that play different and varied roles within this system to ensure the integrity of the tax system, including the equitable treatment of all Australians under the tax system in Australia. It is vital that any person who is considering becoming a part of the Australian taxation profession has a full and detailed knowledge of the system and how it works. The aim of this article is to explain the most important aspects of the institutional framework of the Commonwealth taxation system of which you as a future tax professional should be aware.

2. Where are the powers to tax contained?

The *Australian Constitution* gives the Commonwealth the power to impose taxation under s.51(ii) and to make laws in respect to taxation. Specifically section 51(ii) provides:

“The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to: Taxation: but so as not to discriminate between States or parts of States.”

The powers under the *Australian Constitution* consist of:

- Exclusive Powers (Customs and Excise);
- Concurrent Powers (Income Tax); and
- Residual Powers (State Taxes such as Stamp Duty, Land Tax and Payroll Tax).

The Constitution contains several provisions that provide protection to both the States and the public from the Commonwealth in relation to their powers to levy taxation and make new laws.

Parliament consists of a lower house (known as the House of Representatives) and an upper house (known as the Senate). Bills must pass through both houses of Parliament. The lower house introduces the (taxation) bill into Parliament and it proceeds to the upper house to pass it. Once it is passed by both houses and receives Royal Assent from the Governor-General it becomes law.

Special rules exist in relation to bills relating to revenue law. The upper house cannot make amendments to the proposed law on taxation; only the lower house can make changes to the proposed bill. Proposed laws appropriating revenue or moneys, or imposing powers of

taxation, shall not originate in the Senate [s.53]. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law. The Senate may not amend proposed law imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual service of the Government. The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

A further constitutional restriction is contained in section 55 of the Constitution and this provides that laws imposing taxation shall deal only with the imposition of taxation and any provision therein dealing with any other matter shall be of no effect. Laws imposing taxation shall deal with one subject matter only, laws imposing duties of customs shall deal with duties of customs only and laws imposing duties of excise shall deal with duties of excise only. This ensures that the Commonwealth law with respect to income tax is contained in separate Acts, the Assessment Act dealing with the assessment and collection of tax and the Ratings Act which imposes the tax and fixes the rate of tax.

For example, the *Income Tax Assessment Act 1997* contains the assessment provisions whilst the *Income Tax Rates Act 1986* contains the rates of taxation imposed by the Government on taxpayers for the relevant financial year.

Section 99 provides a further limitation on the Government, the Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State of any part thereof over another State or any part of a State. Each state must be dealt with fairly and not receive any advantage or be treated unfairly compared to another State.

Section 114 provides that a State shall not, without the consent of the Parliament of the Commonwealth raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose tax on property of any kind belonging to a State. The entity that is claiming the exemption must actually be the State or the Commonwealth and an entity that is controlled by the State will not be covered. For example, a building society controlled by the Government has been determined not to be the government as it was only controlled by state laws relating to building societies.

The courts deal with cases between the States and the Commonwealth in relation to this section and to whether the tax raised is a tax raised on property or something else. For example, fringe benefits tax (FBT) is not a tax on property but a transaction affected by FBT which can result in FBT being charged by the State.

Prior to 1 July 2001, the Federal Government provided the States with a share of the revenue collected from the levying of income tax. The States also raise funds from various states taxes and duties including Land Tax, Payroll Tax and Stamp Duty.

The States and the Commonwealth entered into new arrangements regarding their revenue sharing after the introduction of the Goods and Services Tax (GST) whereby the GST revenue collected by the Commonwealth is channelled back to the States. In return the States had to abolish certain state taxes and charges.

3. Background to Australian Taxation System

Previously, each State in Australia was able to levy income taxes, whilst the Commonwealth obtained its revenue via customs and excise duty (raised on such items as alcohol, cigarettes, fuel). South Australia introduced income taxes in 1884, New South Wales and Victoria in 1895, Queensland and Tasmania in 1902 and Western Australia in 1907.

In order to raise revenue to fund Australia's involvement in World War I, the Commonwealth Government introduced income tax in 1916. This resulted in different tax levies being raised by two authorities (State and Federal) as well as different rates between the States. After 1916, the States and the Commonwealth endeavoured to provide a uniform tax system. In 1923 to minimise the duplication of administration facilities the Commonwealth and all the States except Western Australia agreed that federal income tax was to be collected by State Officials and a joint income tax return was used to record both State and Federal taxes, but the differences between States and the Commonwealth were still apparent. In 1942, as a wartime measure for World War II, the Commonwealth suspended all agreements then existing between the Commonwealth and the States and assumed all functions connected with the imposition and collection of income tax and to this day the Commonwealth still maintains this role.

The States appealed to the High Court in order to regain their rights to levy tax by arguing that it was unconstitutional for the Commonwealth to levy tax. It was determined that the States do have a right to impose income tax (*South Australia v Commonwealth* (1942) 65 CLR 373 and that the payment of federal taxes before state taxes is invalid (*Victoria v Commonwealth* (1957) 99 CLR 575). However as the states are reliant on Commonwealth grants and revenue as prescribed in Section 96 of the *Australian Constitution* they could lose their grants if they imposed state income taxes, the States have never attempted to levy income taxation again. Notably, the states still levy state-based taxes such as duty (Stamp Duty), Land Tax and Payroll Tax.

4. Principles of a Good Tax -

There is substantial literature on the fundamental principles of tax policy that a tax or tax system should exhibit. Traditionally these criteria have included equity, efficiency, simplicity,

certainty and neutrality. Each of these principles contains several elements which are detailed below.

Equity involves distributing the tax burden fairly across the population. It also involves two fundamental elements horizontal and vertical equity. Horizontal equity refers to the notion that taxpayers in the same position should pay the same amount of tax. Vertical equity refers to the concept that taxpayers in different positions should pay a different amount of tax.

Efficient taxes do not skew resource allocation decisions across the economy, contributing to a strong, productive economy. There are again two elements of efficiency. Administrative efficiency refers to the fact that a tax should provide to the government, the largest possible amount of money from the taxpayer that is not consumed by administration costs.

Economic efficiency or neutrality requires that a tax is not discriminatory and ensures that a taxpayer will not alter his situation or be influenced in his actions by any taxation effect, unless it is an intended impact of that tax (e.g. a carbon tax is designed to impact environmental decision making).

Simplicity in tax design and administration involves minimising uncertainty and compliance costs for taxpayers. Taxpayers should be able to understand their obligations.

Certainty embodies that taxpayers should know in advance that they have a tax liability so they can make provision for it and formulate plans subject to such provisions.

Neutrality is where the impact of taxes should not influence taxpayers' choices by artificially distorting or altering the costs of alternative goods, different modes of investment or different activities. For example tax should not affect the choice of operating through a partnership versus a company structure.

The basic principles of equity, efficiency, certainty, simplicity and neutrality are considered to provide reliable and basic signposts for improving tax administration. As students you will see these criteria utilised in various law reform reports as measures of the effectiveness of a particular tax measure.

5. Government Taxation Reviews

The Government over the years has held several reviews into the Australian Taxation System, the major ones you should be aware of include –

- Taxation Review Committee (Asprey Committee) 1975 (this review many years after it was released was the catalyst for Capital Gains Tax (CGT) and Fringe Benefits Tax (FBT))

- Review of the Australian Tax System (Draft White Paper) 1985
- A New Tax System (ANTS) 1998
- Review of Business Taxation (Ralph Review) 1999
- Australia's Future Tax System (Henry Review) 2009
- Tax Forum 2010

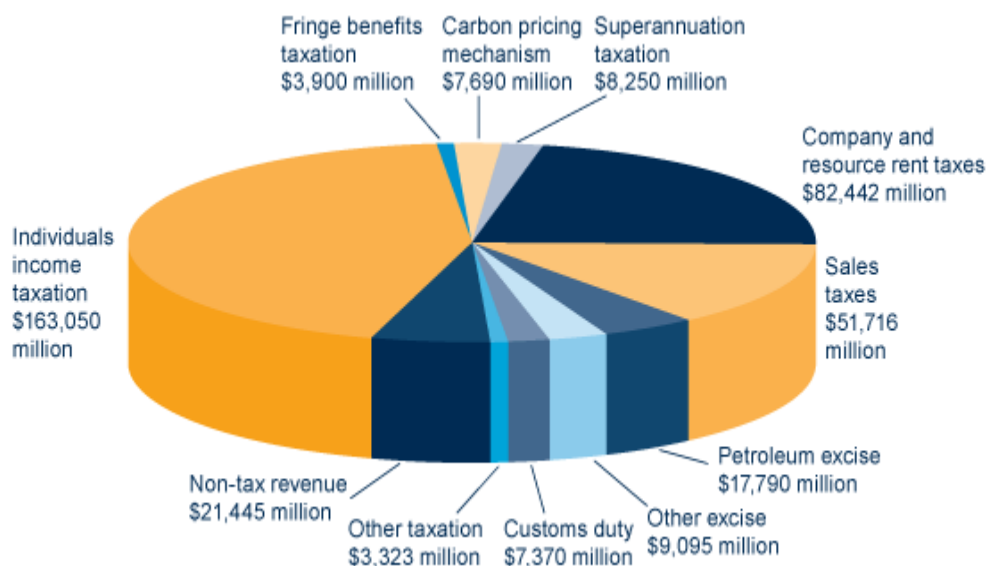
5.1 Government Revenue and Expenditure

The revenue from taxation is an important source of income for the Australian Government and the revenue that is collected is used by the Government to fund expenditure in areas such as health, social welfare and education and other community projects.

The details of revenue and expenditure are contained in the Federal Government's Budget. The Federal Budget is handed down by the Treasurer in May of each year. The Budget contains the Government's annual financial report and policy statement to the Parliament. Once the budget is handed down all the papers associated with the budget are available for viewing by the general public (www.budget.gov.au).

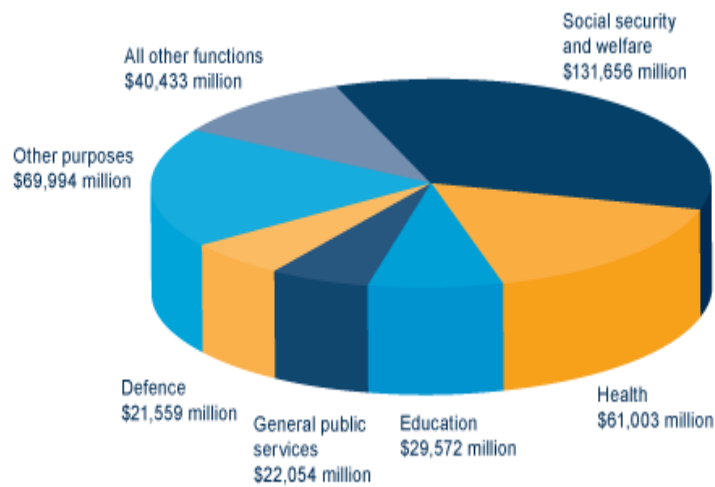
The charts below have been extracted from the 2012/13 Federal Budget Papers and detail the revenue and expenditure for that period.

Where revenue comes from



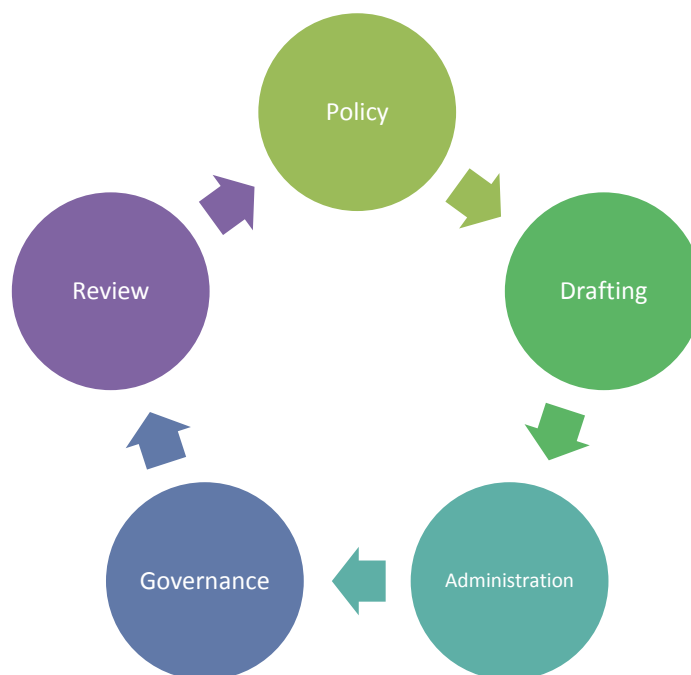
Source: Federal Budget Papers 2012/2013

Where taxpayers' money is spent

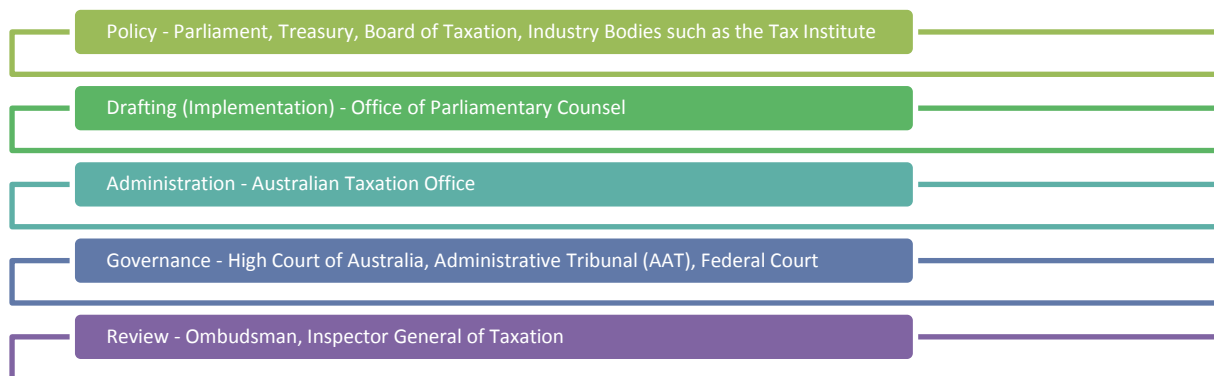


Source: Federal Budget Papers 2012/2013

6. The Lifecycle of Taxation



It is important for all taxation students to understand the lifecycle of tax and to have a detailed introduction to the organisations involved at each stage. The following section will introduce you to the following organisations which are categorised into the following groups as per the above diagram.



6.1 Policy

6.1.1 Parliament

Parliament House is the home of Australian democracy, it is where laws are made and as mentioned, under Australia’s Constitution the Federal Parliament can make laws on various matters including taxation. A new Commonwealth law can only be made, or an existing law changed or removed by or under the authority of the federal Parliament by or in accordance with an Act of Parliament.

The original ideas for government legislation come from various sources. They may result from the policies of the governing political party, election promises, suggestions by Members of the House of Representatives and Senators or from interest groups in the community.

A proposal is considered by Cabinet or the Prime Minister and if agreed to the Minister responsible has the relevant department arrange the preparation of a bill. The Minister responsible for taxation is the Treasurer who is supported by the Assistant Treasurer and policy advisors who are experts in the field of taxation and economics.

A bill is a formal document prepared in the form of a draft Act, which acts as a proposal for new laws or changes to an existing law. A bill becomes an Act (law) only after it has been passed in identical form by both Houses of Parliament and has been assented to by the Governor-General.

The Houses of Parliament consist of

- The **House of Representatives** - known as the lower house and where members are elected by the public, the party with the most elected members has the right to form the Government.
- The **Senate** - known as the upper house is made up of Senators elected by the public

Bills are drafted by the Office of Parliamentary Counsel (OPC) in accordance with detailed instructions issued by departments. The role of the OPC will be discussed in detail later in this chapter.

Bills are presented to Parliament and are accompanied by an explanatory memorandum (EM) which is a document which explains the reasons for the bill and outlines its provisions.

Taxation bills impose a tax. A recent example of this is the Carbon Tax which was contained in the *Clean Energy Act 2011*. You can see below the necessary legislation and supporting materials required to introduce the new tax. From this example, you may also start to develop an understanding of just how complex Australia's taxation system is. The Carbon Tax legislative package originally consisted of 18 pieces of legislation as follows:

The *Clean Energy Legislative Package* included the following legislation:

[Clean Energy Act 2011](#) and [Explanatory Memorandum](#)
[Clean Energy \(Consequential Amendments\) Act 2011](#) and [Explanatory Memorandum](#)
[Clean Energy Regulator Act 2011](#) and [Explanatory Memorandum](#)
[Climate Change Authority Act 2011](#) and [Explanatory Memorandum](#).

Other relevant Clean Energy legislation includes:

[Clean Energy \(Unit Shortfall Charge-General\) Act 2011](#) and [Explanatory Memorandum](#)
[Clean Energy \(Unit Issue Charge-Fixed Charge\) Act 2011](#)
[Clean Energy \(Unit Issue Charge-Auctions\) Act 2011](#)
[Clean Energy \(Charges-Customs\) Act 2011](#)
[Clean Energy \(Charges-Excise\) Act 2011](#)
[Clean Energy \(International Unit Surrender Charge\) Act 2011](#)
[Ozone Protection and Synthetic Greenhouse Gas \(Import Levy\) Amendment Act 2011](#)
and [Explanatory Memorandum](#)
[Ozone Protection and Synthetic Greenhouse Gas \(Manufacture Levy\) Amendment Act 2011](#) and [Explanatory Memorandum](#).
[Clean Energy \(Fuel Tax Legislation Amendment\) Act 2011](#) and [Explanatory Memorandum](#)
[Clean Energy \(Excise Tariff Legislation Amendment\) Act 2011](#)
[Clean Energy \(Customs Tariff Amendment\) Act 2011](#)
[Clean Energy \(Tax Laws Amendments\) Act 2011](#) and [Explanatory Memorandum](#)
[Clean Energy \(Income Tax Rates Amendments\) Act 2011](#)
[Clean Energy \(Household Assistance Amendments\) Act 2011](#) and [Explanatory Memorandum](#).

Bills dealing with taxation are bills that deal with the administrative procedures for assessing and collecting tax.

You can view the following websites to gain further information on proposed legislation:

www.aph.gov.au

6.2 Treasury¹

The Commonwealth Treasury is a central policy agency which is expected to anticipate and analyse policy issues with a whole-of-economy perspective, understand the circumstances of government and all affected parties and stakeholders circumstances and respond to changing events and directions.

The Commonwealth Treasury also plays an integral part in the formulation of taxation legislation in Australia.

The role of Treasury is to assess and provide advice on Commonwealth tax arrangements that contribute to Australia's overall financial position. It is responsible for assessing and advising on the general design of the tax system and its components, and retirement income policy, in relation to economic efficiency, equity, income distribution, budgetary requirements and economic feasibility.

Treasury undertakes this role with the assistance of the Australian Taxation Office (ATO) and other private sector experts. Notably, before 2002, the ATO was responsible for developing taxation legislation and instructing Parliamentary Drafters. This function was transferred to Treasury in 2002.

The Treasury reports directly to the Federal Treasurer and the Assistant Treasurer in the areas of taxation and budgetary matters. The Revenue Group under the control of the Executive Director is responsible for the area of taxation and is made up of the following divisions -

- Board of Taxation Secretariat
- Business Tax Division
- Indirect Tax Division
- International Tax and Treaties Division
- Personal and Retirement Income Division
- Tax Analysis Division
- Tax System Division

Some of Treasury's main functions in relation to the taxation system include –

- Providing assistance to the Treasurer to produce the annual Federal Budget
- Producing explanatory memorandums (EM) to accompany taxation bills

¹ What follows in this section is adapted from this source www.treasury.gov.au

- Creation of Exposure Drafts of Legislation/Regulations
- Providing consultation on taxation policy
- Receiving submissions on taxation policy from interested parties
- Providing assistance to government committees conducting reviews

6.3 Board of Taxation ²

The Board of Taxation is a non-statutory body charged with contributing a business and broader community perspective to improving the design of taxation laws and their operations. The Board advises the Treasurer on ways of improving the integrity and functioning of the taxation system and commissioning research and other studies on tax matters. The operations of the Board are governed by its Charter.

The Board has ten members, 7 are from private practice/industry and 3 ex-officio members being the Secretary of Treasury, The Commissioner of Taxation and the First Parliamentary Counsel. A secretariat is provided by Treasury to assist the Board with conducting its role effectively.

The Board of Taxation was established by the government after recommendations were made in the Ralph Review of Business Taxation. The recommendations emerged from a concern that the voice of business was not being effectively heard by the Government and its advisers in the development of taxation laws. The Government determined that the board should have a broader, whole-of-tax system view rather than just a business focus.

The Board's mission is to "contribute a business and broader community perspective to improving the design of taxations laws and their operation."

The Board's function is to provide advice to the Treasurer on

- the quality/effectiveness of tax legislation and processes for its development including the processes of community consultation
- improvements to the general integrity and functioning of the tax system
- research/other studies commissioned by the Board on topics approved or referred by the Treasurer
- other tax matters referred by the Treasurer

The Board holds 11 monthly board meetings per year throughout Australia and holds meetings also with members of advisory panels.

² What follows in this section is adapted from this source www.taxboard.gov.au

The Board will establish working groups to undertake the reviews that it feels are necessary or which have been recommended by the Treasurer. The working groups will usually consist of –

- A Chairman (who is a nominated Board member)
- Board members
- Treasury officials
- ATO officials
- Private sector participants

An expert panel may be established and may include external consultants to provide advice to the working group.

The working group will prepare a discussion paper on the topic under review and then release the paper to obtain public submissions. Once the submissions have been considered the working group may undertake targeted or confidential consultation and then prepare a draft report for the Board to consider. The Board will then pass its recommendations to the Treasurer for his and the governments consideration.

The reviews undertaken by the Board may be made up of different types such as long reviews, short-term reviews or even advice to Treasury.

Here are some examples of the reviews the Board has undertaken:

- Alienation of Personal Services Income Rules - Post-Implementation Review
- Application of Consistent Self-Assessment Principles
- Consultation Arrangements
- Consultation on Tax Studies Institute
- Definition of a Charity
- Elements of the Taxation of Employee Share Scheme Arrangements
- Identifying Inoperative Provisions
- Improving Australia's Tax Consultation System
- Inspector-General of Taxation
- International Taxation Arrangements
- Legal Framework for the Administration of the GST
- Quality and Effectiveness of the Non-Commercial Losses Legislation - Post-Implementation Review

- Quality and Effectiveness of the Small Business Capital Gains Tax Concessions - Post-Implementation Review
- Small Business Tax Compliance Costs Study
- Tax Design Review Panel Recommendations
- Taxation of Discretionary Trusts
- Taxation Treatment of Islamic Finance Products

The overall aim of the Board is ensure that the community obtains an opportunity to be represented in the design of the Australian Taxation System.

6.4 Drafting/ Implementation

6.4.1 Office of Parliamentary Counsel (OPC)³

The OPC was established under the *Parliamentary Counsel Act 1970*. The First Parliamentary Counsel is the head of OPC and the organisation engages approximately 55 drafters who are responsible for the drafting of government bills and legislation.

The main functions of OPC are:

- the drafting of proposed laws for introduction into either House of the Parliament
- the drafting of amendments of proposed laws that are being considered by either House of the Parliament
- the publishing, and the making of arrangements for the printing and publishing of:
 - laws, and proposed laws, of the Commonwealth; and
 - compilations and reprints of laws of the Commonwealth; and
 - information relating to laws of the Commonwealth; and
- the preparing and publishing of Government Notices Gazettes, including Special and Periodic Gazettes

It should be noted that the OPC is not responsible for the drafting of EM. As explained previously this role usually falls to Treasury.

It is an aim of the OPC to develop and implement procedures for making laws easier to read and understand through the use of plain English and other modern drafting techniques. This applies to both new legislation as well as rewriting of existing Acts. An example of this is the rewrite of sections within the ITAA 1936 into a simpler format in the ITAA 1997.

³ What follows in this section is adapted from this source www.opc.gov.au

6.5 Administration

6.5.1 Australian Taxation Office (ATO) ⁴

The Australian Taxation Office (ATO) is the Federal Government's primary revenue collection agency. The ATO is overseen by the serving Treasurer and forms part of the Treasurer's portfolio. The ATO is responsible for managing the Australian revenue systems and ensuring that businesses and individuals comply with relevant legislation in relation to tax, superannuation and excise.

The aim of the ATO is to manage and shape the revenue systems which sustain social and economic policy and fund services for Australians. Their main role is to administer legislation for taxes, superannuation and excise. The ATO also address broader issues affecting Australia's revenue systems, such as aggressive tax planning, persistent tax debtors, globalisation and the cash economy

The ATO also engages with other departments on policy matters relating to tax and excise such as Treasury. It will also, if granted authority to do so by the Government instruct the OPC to prepare legislation that it deems necessary.

The head office of the ATO is located in Canberra and all the operations of the ATO and general administration are supervised by the Commissioner of Taxation. The current Commissioner of Taxation is Chris Jordan. The Commissioner is appointed by the Governor General for a term of seven years but can be reappointed after the expiry of that term. The Commissioner has broad powers to delegate to others e.g. delegate authority to tax officers to conduct audits and investigations on his behalf. All tax officers owe a duty of fairness to taxpayers and Courts can intervene if those delegated powers are abused. The Commissioner is also responsible for reporting to parliament on ATO issues e.g. Annual Report.

Next in the line of authority after the Commissioner are three Second Commissioners who have all the powers and functions of the Commissioner but they do not have the power to delegate or the making of the Annual Report to Parliament

The ATO has a number of different divisions:

- **Law** – Tax Counsel Network, Policy Management, ATO Finance, Australian Valuation Office, Independent Integrity Adviser
- **Compliance** – Micro Enterprises and Individuals, Small and Medium Enterprises, Large Business and International, international tax matters other than representing

⁴ What follows in this section is adapted from this source www.ato.gov.au

Australia in treaty negotiations, Marketing Communications, Aggressive Tax Planning, Serious Non-Compliance, Compliance Support and Capability, Tax Practitioner and Lodgement Strategy, Goods and Services Tax, Excise, Superannuation

- **IT, Easier, Cheaper, More Personalised (ECMP) and Operations** – Information and Communications Technology, Business Solutions, ECMP Change program and Release, Vendor Programmes, Client Contract, Operations Support and Capability, Client Account Service and Debt
- **ATO People and Place** – Employment Policy and Services, Workplace Planning and Development, Corporate Services
- **Chief Operating Officer** – Operations, Debt, Client Contact

The ATO has approximately 23000 employees located in different offices throughout Australian carrying out various roles.

The Government has granted very wide- ranging powers to the ATO to ensure the integrity of the Australian Taxation System and that taxpayers comply with their taxation obligations. It has the ability to conduct audits on taxpayers affairs, restrict taxpayers leaving the country if they have outstanding tax liabilities, can refer a matter to the Federal Police in which criminal charges may be laid for offences such as committing tax fraud or evasion, the right to enter premises and copy documents as well as the right to demand taxpayers present themselves before the Commissioner or his delegate.

The ATO Taxpayer Charter sets out what taxpayers can expect when dealing with the ATO. It will help them understand their rights, obligations and what they can do if not satisfied.

The Charter is available at:

<http://www.ato.gov.au/corporate/content.aspx?doc=/content/63133.htm>

The Commissioner of Taxation provides the following commentary of the role of the ATO within the community. The statement illustrates that the ATO wants to actively assist taxpayers to meet their taxation obligations:

“Australia's tax and superannuation systems are community assets and we all have a role to play in their care and maintenance. These systems underpin the way of life we enjoy in Australia.

Members of the community play their part by fulfilling their responsibilities under the law, including being able to access benefits that may be available to them. As

administrators, our role is to build the community confidence in these systems that encourage people to do the right thing.

To foster that confidence, we need to have a relationship with the community based on mutual trust and respect. We nurture that relationship by:

- being open, transparent and accountable in our dealings with the community
- being professional, responsive and fair, taking into account people's circumstances and previous compliance behaviour
- trying to make it as easy as possible for people to comply with their obligations
- supporting those who want to properly participate in these systems
- being firm with those who try to avoid their obligations, and effective in bringing them to account.”

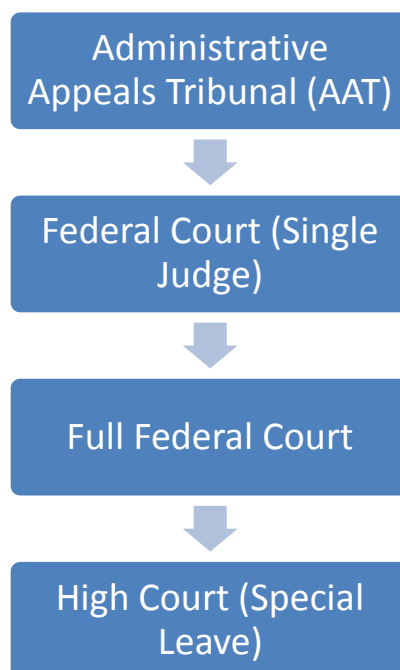
The ATO website at www.ato.gov.au is one of the most useful tools you will come across both as a student and a professional.

6.6 Governance

6.6.1 Legal System

Taxpayers have the ability to challenge legislation and decisions made by the ATO and this is done via an appeals process using the legal system in Australia.

The appeal process is as follows –



Notably, taxpayers have the choice of initiating an action in relation to Commonwealth taxation in either the AAT or the Federal Court.

A comprehensive analysis of whether taxpayers should choose the AAT or Federal Court is beyond the scope of this article. Notably, the AAT is able to “stand in the shoes” of the Commissioner and re-exercise the Commissioner’s discretion. There are also differences in relation to costs between the AAT and the Federal Court. Smaller taxpayers may find the AAT more accessible.

Therefore the ultimate governance of the taxation system is held by the High Court of Australia, as it makes the final decision on the matter being disputed by the taxpayer and the Government or ATO. If a taxpayer is successful in the High Court then other taxpayers may also benefit from the decision. The Government and ATO can make decisions to amend the current legislation (this can even be undertaken retrospectively) if they feel the decision was incorrect and then the process would start all over again.

For further information on the AAT and Federal Court see:

www.aat.gov.au/

www.fedcourt.gov.au/

6.6.2 High Court of Australia⁵

The High Court of Australia is the highest Court in the Australian judicial system and it is established by section 71 of the Constitution. Currently there are 7 Justices in the High Court including the Chief Justice Robert French. The High Court is located in Canberra but conducts sittings in Queensland, South Australia, Western Australia and Tasmania.

The functions of the High Court are to interpret and apply the law of Australia, to decide cases of special federal significance including challenges to the constitutional validity of laws and hear appeals, by special leave, from federal, state and territory courts.

The High Court of Australia deals with cases which come to it on appeal or which begin in the High Court itself (these are constitutional cases). Cases which involve interpretation of the Constitution, or where the Court considers the principle of law involved to be one of major public importance are normally determined by a Full Bench (all 7 Justices). Disputes between states or states and the Commonwealth are also heard by the High Court.

Most of the Court’s work relates to the hearing of appeals against decisions of other courts. In the case of taxation these would be those of the Federal Court. There is no automatic

⁵ What follows in this section is adapted from this source www.hcourt.gov.au

right to have an appeal heard by the High Court and parties who wish to appeal must persuade the Court in a preliminary hearing that there are special reasons for the appeal to be heard.

There are 3 courtrooms at the High Court –

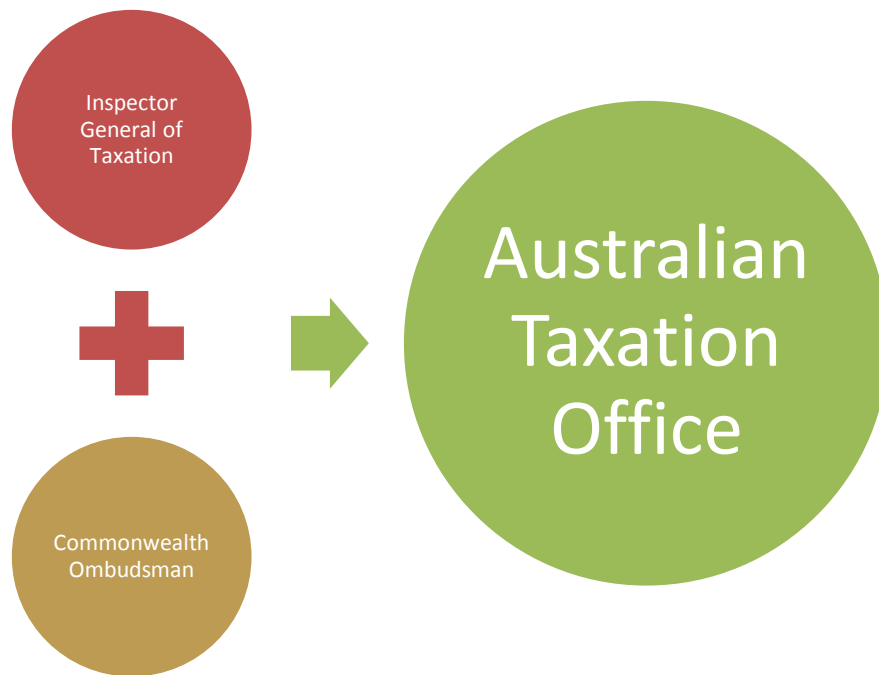
- Court One – deals with constitutional issues
- Court Two – deals with appeals
- Court Three – contains a jury box and deals with cases of treason etc (which to this date has never been used for this reason).

Examples of recent cases relating to taxation within the High Court include –

- *Commissioner of Taxation v Symone Anstis* [2010] HCA 40 tax case on appeal from Federal Court in relation to the deductibility of self-education expenses against Youth Allowance
- *Pape v Commissioner of Taxation* [2009] HCA 23 is an Australian case concerning the constitutional validity of the *Tax Bonus for Working Australians Act (No 2) 2009* (Cth) which sought to give one-off payments of up to \$900 to Australian taxpayers.

6.6.3 Review

It is also important to note that whilst the ATO is the administrator of the Australian Taxation System on behalf of the Government it is still held accountable for its actions. In Australia these roles as “watchdogs” are held by bodies such as the Inspector General of Taxation and the Office of the Commonwealth Ombudsman.



6.6.4 Ombudsman⁶

The role of the Ombudsman is to assist taxpayers by investigating complaints from those who believe they have been treated unfairly or unreasonably by the Australian Taxation Office. He may also commence an investigation on his own accord without any complaints being received by the public, if it is believed that it serves the public interest.

The Ombudsman's office also has the power to make recommendations to Government on administrative issues which are perceived to exist within Government Organisations.

The services offered by the Ombudsman are free and allow taxpayers the ability to have an organisation that is independent and impartial from the one they are having a problem with.

The powers the Ombudsman has include –

- to summons documents
- to require persons to attend and be interviewed on oath, and
- make recommendations for changes in administrative policy to the government

In relation to taxation the Ombudsman can investigate complaints such as complexity of the taxation system, disputes regarding oral advice, delays and administrative issues, lack of responsiveness and transparency and insufficient explanation by the ATO, computerisation and lack of human interaction, debt recovery actions, record keeping failures and administrative error in decision making.

⁶ What follows in this section is adapted from this source www.ombudsman.gov.au

In the 2010-11 financial year the Ombudsman's office received 2589 complaints about the ATO in areas such as audits, debt payment plans, delays in processing and GST audits.

You can view the following website to gain further information

6.6.5 Inspection General of Taxation⁷

The *Inspector-General of Taxation Act 2003* established an independent statutory agency to review:

- systems established by the ATO to administer the tax laws, and
- systems established by tax laws in relation to administrative matters

for the purposes of reporting and making recommendations to Government on how those systems could be improved.

On completion of a review the Inspector General reports directly to Government and the Government will make that review available to the general public.

The current Inspector General of Taxation is Ali Noroozi.

The role and responsibilities of the Inspector General of Taxation is as per the summary below which has been obtained from the website www.igt.gov.au

- The Inspector-General, established in 2003, is an independent statutory office to review systemic tax administration issues and to report to the Government with recommendations for improving tax administration for the benefit of all taxpayers.
- The Inspector-General's reports to Government are required to be made public by the Government.
- The sole focus of the Inspector-General is on tax systems. Such tax systems focus on the conduct of the Tax Office or the underlying tax laws dealing with administrative matters, including, for example, the process for assessing, collecting, paying or recovering amounts under a tax law, or the enforcement of a tax law.
- The Inspector-General cannot review taxation policy. The Board of Taxation is responsible for advising the Government on specific tax policy issues.
- The Inspector-General does not deal with individual taxpayer matters. Individual taxpayer disputes are handled by the Commonwealth Ombudsman.
- The Inspector-General effectively has sole control in setting his work program and determining the terms of reference of a review. In practice, the Inspector-General sets his work program after consultation with the community.
- The Inspector-General, in the conduct of his reviews, can invite submissions from the public or particular groups of taxpayers or tax professionals. He may receive

⁷ What follows in this section is adapted from this source www.igt.gov.au

submissions in confidence and is also able to hold meetings with taxpayers, tax professionals or their representatives.

- The Inspector-General has strong powers to compel production of documents by tax officials and to take evidence from tax officials where this proves necessary. This ensures that systemic tax administration issues can be rigorously pursued and resolved.
- The Inspector-General cannot direct the Commissioner of Taxation, other than to require the Commissioner to disclose information for a review. This means the statutory independence of the Commissioner of Taxation is retained.
- The Inspector-General is appointed by the Governor-General and, effectively, is an arm of the Executive, reporting directly to Government, although accountable to Parliament as a independent statutory agency.
- The Inspector-General and his staff are based in Sydney. The agency has regular consultation with accounting, tax, legal and business bodies throughout Australia.

The work program for 2012 onwards is to undertake reviews on the following areas:

- Aspects of the ATO's use of compliance risk assessment tools
- ATO's administration of penalties
- ATO's management of transfer pricing matters
- Aspects of the ATO's compliance approaches to individual taxpayers
- ATO's interactions with the Australian Valuation Office

6.6.6 Registration and Regulation of the Tax Profession in Australia ⁸

The registration and regulation of tax practitioners including tax agents and business activity statement agents (BAS Agents) is governed by the provisions of the *Tax Agents Services Act 2009* (TASA) which is administered by the Tax Practitioners Board ("TPB").

The TPB is a national Board which has the responsibility for:

- registering tax agents
- ensuring that agents maintain appropriate skills and knowledge
- investigating complaints against agents
- ensuring that unregistered entities do not hold themselves out to be registered agents.

Code of Professional Conduct

Tax agents are bound by a statutory Code of Professional Conduct which prescribes the ethical and professional standards that must be adhered to by tax agents.

⁸ What follows in this section is adapted from this source www.tpb.gov.au

The principles of the Code are that the registered tax agent must:

- (1) act honestly and with integrity
- (2) comply with the taxation laws in the conduct of their personal affairs
- (3) account to a client for any money or other property received from or on behalf of a client and which is held on trust
- (4) act lawfully in the best interests of a client
- (5) have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that are undertaken in the capacity of a registered tax agent
- (6) subject to any legal duty, not disclose any information relating to a client's affairs to a third party without the client's permission
- (7) ensure that a tax agent service that they provide, or that is provided on their behalf, is provided competently
- (8) maintain knowledge and skills relevant to the tax agent services that are provided
- (9) take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement to be made or a thing being done on behalf of the client
- (10) take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which advice is provided to a client
- (11) not knowingly obstruct the proper administration of the taxation laws
- (12) advise a client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services provided
- (13) maintain the professional indemnity insurance that the Board requires, and
- (14) respond to requests and directions from the Board in a timely, responsible and reasonable manner.

7.0 Conclusion

For an individual beginning their career in taxation a robust knowledge of the above institutional frameworks is necessary. It is advisable that students of taxation regularly monitor these websites for recent or proposed developments in the taxation law.