

TAXATION LAW SUMMARY



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Sample

PART A: THE BROAD FRAMEWORK OF THE REVENUE AND TAXATION SYSTEM

Topic 1: Theories and sources of revenue and taxation law

Revenue and taxation law is fundamental in Australian society and as such is influenced by a variety of contextual factors. The Australian Taxation Office (ATO) is concerned with a multitude of areas of taxation, such as goods and services tax, pay as you go (PAYG) Instalments, tax file numbers (TFNs) and tax offsets (rebates). Traditional theories have recently been mixed with social policy and welfare theory to inform the changing context of Australian tax law.¹ However, the constitutional, statute and press release procedures of law reform continue to play a role in revenue and taxation law.

1.1 Theories of revenue and taxation

Australia's Future Tax System, also known as the Henry Review, is a seminal instrument which merges traditional theories of taxation policy with a contemporary context of welfare policy.² This reflects the contextual framework of taxation and revenue law today.

1.1.1 Traditional theories of taxation

The traditional approach to justify taxation law is that the government needs to generate revenue in order to provide for public goods.³ In reference to the *Strategic Statement 2010-15* of the Australian Taxation Office, The Commissioner of Taxation and Registrar of the Australian Business Register promotes this traditional approach.

¹ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.10].

² P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.10].

³ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.20].

It is stated that: "Revenue from Australia's tax system helps fund public goods and services that give effect to economic and social policies".⁴ Public goods are those which will not be supplied by the market, or will not be sufficiently provided by the market for everyone to enjoy. Accordingly, public goods must not be incurred at an individual's expense, and all individuals must be included in the benefit.⁵ The need for the government to create revenue is often taken as a 'given', but that need should satisfy certain criteria of a 'good taxation system'.⁶ The traditional criteria are equity, efficiency and simplicity.⁷ The following extract from the Henry Review demonstrates how these factors also now encompass contemporary concerns of sustainability and policy consistency.⁸

Henry Review: Design principles for the tax and transfer system

Equity

The tax and transfer system should treat individuals with similar economic capacity in the same way, while those with greater capacity should bear a greater net burden, or benefit less in the case of net transfers. This burden should change more than in proportion to the change in capacity. That is, the overall system should be progressive. Considerations about the equity of the system also need to take into account exposure to complexity and the distribution of compliance costs and risk.

Efficiency

The tax and transfer system should raise and redistribute revenue at the least possible cost to economic efficiency and with minimal administration and compliance costs. All taxes and transfers affect the choices people and businesses make by altering their incentives to work, save, invest or consume things of value to them. The size of these efficiency costs varies from tax to tax (see [Chart 1.5 in Box 1.1](#)) and from transfer to transfer, reflecting, in part, the extent to which they affect behaviour. Instability in policy settings can reduce economic efficiency by increasing uncertainty about the expected payoffs to long-term decisions such as investing in education, choosing retirement products, investing in long-lived productive assets and the choice of business structure. These costs represent a net loss to society as a whole, whereas revenue raised through a tax is redistributed among members of society through government expenditure, including transfer payments.

⁴ M D'Ascenzo, 'Strategic Statement 2010-15' *Australian Taxation Office* (18 June 2010) <<http://www.ato.gov.au/government/content.aspx?doc=/content/00243384.htm&pc=001/001/002/008&mnu=39504&mf=001/061&st=&cy=>>>

⁵ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.20].

⁶ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.30].

⁷ P Burgess, G S Cooper, M Stewart and R J Vann, *Cooper, Krever and Vann's Income Taxation Commentary and Materials* (7th ed, 2012), [1.30].

⁸ Australia's Future System Final Report, Chapter 2: Designing a future tax and transfer system, Section 2.2, Box 2.1 'Design principles for the tax and transfer system' <http://www.taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/FinalReport_Part_1/chapter_2.htm>

Simplicity

The tax and transfer system should be easy to understand and simple to comply with. A simple and transparent system makes it easier for people to understand their obligations and entitlements. People and businesses will be more likely to make the most beneficial choices for themselves and respond to intended policy signals. A simple and transparent system may also involve lower compliance costs for taxpayers and transfer recipients.

Sustainability

A principal objective of the tax system is to raise revenue to fund government programs, including transfer payments. The tax system should have the capacity to meet the changing revenue needs of government on an ongoing basis without recourse to inefficient taxes. To be sustainable the tax system, together with the transfer system, must contribute to a fair and equitable society. The cost of the transfer system needs to be predictable and affordable in the light of demographic change. Sustainability also means that the structural features of the system should be durable in a changing policy context, yet flexible enough to allow governments to respond as required. Legal and administrative institutions and frameworks should also be robust to maintain the effectiveness of the system and underpin the legitimacy of the system. Policy settings should also contribute to environmental outcomes that are sustainable.

Policy consistency

Tax and transfer policy should be internally consistent. Rules in one part of the system should not contradict those in another part of the system. To the extent possible, tax and transfer policy should also be consistent with the broader policy objectives of government. However, the primary objectives of the tax and transfer system, to raise revenue and provide assistance to those in need, should not be compromised by other policy objectives.



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