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Editorial

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Abstract
[Extract] Not since 1936 has there been such an opportunity for the reform of the Australian tax law. Voters have dampened the fervour for tax reform, with the defeat of the Coalition an dits consumption tax package at the last Federal election. Yet the push for change goes on unabated.

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EDITORIAL

Not since 1936 has there been such an opportunity for the reform of the Australian tax law. Voters may have dampened the fervour for tax reform, with the defeat of the Coalition and its consumption tax package at the last Federal election.

Yet the push for change goes on unabated. The Government has announced the introduction of a taxpayers' Charter of Rights, the appointment of a Taxation Ombudsman, a Small Taxation Claims Tribunal and another consultative group to include outsiders which will advise on major tax rulings. The innovations are commendable. They will open up new avenues of appeal for taxpayers. But they still do not go to the heart of the problem: the unnecessary complexity of the law.

The Government has "streamlined" the Sales Tax laws. Although this could have been done much more effectively, according to the article in this volume by Robert de Liefde, it is a welcome start. A review is under way of the Fringe Benefits Tax compliance laws. And former Second Commissioner Brian Nolan heads up the Tax Law Improvement Project instituted by the Treasurer.

Unfortunately, the reforming zeal of Attorney-General, Michael Lavarch, a devotee of clear drafting, is not the prime force behind this project. Speeches by Mr Nolan suggest that scope for real improvement is limited to improving the appearance and some of the language of the tax law. Mr Nolan once described the tax law as a vast cauldron of boiling spaghetti with can after can being poured on top. A prescription of a little oil to stop the spaghetti from sticking is not enough.

The Australian Tax Office ("ATO") has shown the way of reform with its management of the move to self-assessment. The transformation of the ATO into a proactive, business-like organisation has been heartening. We gain a glimpse into the new vision of the ATO, and its intent to keep Australia at the forefront of modern tax administration, from John Wickerson's article in our second issue commenting on

recommendations of the Senate Inquiry into the ATO.

This effectiveness in administration and tax collection does not always carry over into the interpretation of the law by the ATO. Nor is it reflected in its input into the formulation of the tax law. The Government's announcement of the appointment of two outsiders to a consultative body advising on major tax rulings offers little encouragement. Most articles in the first issue highlight shortcomings in the application of the laws. Perhaps it is indeed time, as Duncan Bentley suggests in his article, that the interpretive function is removed from the ATO and placed in the hands of an independent body.

Tax rulings become the final interpretation of the law for the vast majority of taxpayers. Taxpayers have not the time, the money nor the flinty constitution necessary to resort to the judicial process. It is unlikely that a Small Taxation Claims Tribunal will open up the review process significantly, as long as the law remains so complex that most issues will be forced into an appeal for further clarification by the courts. This means that the major interpreter of the law is, in fact, the enforcement agency. This offends against the separation of powers doctrine on which our democracy rests. For this, if for no other reason, an independent interpretive body is an attractive proposition.

We fully support the introduction of a taxpayer's Charter of Rights. The draft Taxpayer's Charter put forward by the Taxation Institute of Australia has great merit. It could well form the basis for discussion as the new Charter of Rights is drawn up. The crucial question, is what force will the new Charter of Rights have? We favour, as a minimum, the semi-entrenchment of the New Zealand bill of rights, so that the rights are upheld unless a law specifically states that they are not to apply.

The momentum for reform must not be stalled by bureaucratic fear of change. The ATO have themselves shown the advantages of change in the administrative and collection arenas. They should be at the forefront of the drive for reform of the Australian tax laws, not diluting the benefits with cries of "too hard".

Senator Parer recently commented that,

> The Income Tax Assessment Act today is a complex and incomprehensible mass of convoluted, legalistic and pedantic provisions.

When our published tax laws stretch to a world record 6715 pages, when a judge of the High Court describes the tax legislation as "a legislative jungle in which even the non-specialist lawyer and accountant are likely to lose their way in the search to identify the

provisions relevant to a particular case", and when a former Federal Chief Justice says that "legislation that has such effects is quite unacceptable in a democratic society", it is clear that an overhaul is not only overdue on its merits but also politically wise. What further agitation is required before effective action is taken?

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General Editors
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