

Practical injustice and the private tax rulings system

Dr John Azzi*

Abstract:

This paper demonstrates that practical injustice prevails whenever the Commissioner exercises power to revise a favourable private ruling.

As will be shown, a criterion of liability governing exercise of the revision power is the attainment of a state of satisfaction about whether a material change in the taxpayer's circumstances has occurred since the original ruling was issued. This is akin to a declaration that attracts the requirements of procedural fairness. Yet, such a determination does not constitute a "taxation decision" in respect to which the appeal and review procedures under Part IVC may be invoked. This occurs only once the Commissioner either issues an assessment contrary to the original ruling or notifies of intention to revise the original ruling.

On the other hand, the constitutionally entrenched minimum provision of judicial review of the assessment-making process is only available in extreme and rare instances of decisions made in bad faith or by conscious maladministration. Instead, courts demand reliance on Part IVC, which provides a mechanism for overturning excessive assessments including assessments made in purported but not justifiable exercise of statutory power.

However, requiring dissatisfied taxpayers to await issue of amended assessment or revised ruling unfairly advantages the Commissioner given the highly fraught nature of Part IVC proceedings and the Commissioner's significant success rate in the Administrative Appeals Tribunal. At any rate, Part IVC does not redress procedural unfairness attending exercise of the revision power, being concerned with outcomes rather than procedures.

*Given these drawbacks, the paper argues that an alternative remedy is required to enliven Gaudron J's "animating principle", expounded in *Corporation of the City of Enfield* (2000) 199 CLR 135 at 157, and preserve a reasonable expectation of fair opportunity to make representations refuting revocation of a favourable ruling prior to its revision.*

* Senior Lecturer, School of Law, University of Western Sydney.