

Tax – it's time for change

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Human rights and taxation in Europe: lessons for an Australian taxpayer bill of rights

Key words

Human rights, taxation, Europe, Australia

Abstract

In his 2013 report the Australian *Inspector General of Taxation* wrote of the need to consider the adoption of a taxpayer bill of rights in Australia. Whilst a Charter of taxpayer rights has been a feature of ATO administration for 18 years many view it as inadequate as not providing legal remedies for aggrieved taxpayers. In the absence of Constitutional protection for fundamental rights and the application of the various Australian human rights legislation to taxation matters the courts appear to have been reluctant to extend any legal protections to taxpayers. If either the *Taxation Administration Act 1953* or the *Administrative Decisions (Judicial Review) Act 1977* are found not to be applicable then, typically, the taxpayer is left to attempt to convince the ombudsman of the merits of its case.

It is notable that in Europe there is a growing body of jurisprudence surrounding the application of the *European Convention on Human Rights* to taxation matters by virtue of decisions of the European Court of Human Rights. It is proposed to examine these developments to identify if there are any lessons for Australia as we consider a framework for a taxpayer bill of rights. In particular, the various articles of the Convention that impact on tax matters will be outlined together with the principles adopted by the Court in its approach to interpreting these articles. Some of the primary tax jurisprudence will then be explored with a view to informing on the framing of a taxpayer bill of rights and the possible approach of the courts to its interpretation and application.