

EDITORIAL

Tax education

Tax courses have proliferated around Australia in recent years. Masters in Taxation have become increasingly important for those specialising in tax. It is interesting, therefore, that under the uniform recognition rules, tax is no longer a subject required by lawyers for admission to legal practice.

The trend has been for lawyers to give up tax practice to accountants. Nonetheless, it would seem foolhardy for any lawyer to practise in any area without at least a passing knowledge of the rudiments of tax law. This is particularly so, given that the Commissioner has argued that sections 160M(6) and (7) operate so broadly in relation to damages awards and compensation receipts - something with which any lawyer in general practice will come into contact.

It was argued in the context of the National Review of Standards for the Tax Profession that lawyers are trained in legal reasoning and the interpretation of statutes. Accordingly, they do not need any further training to be able to understand the tax law. We would be loath to put our tax affairs in the hands of a lawyer who has never had to look at a tax law before.

Tax policy

Examine the judgments in cases involving most areas of equity or the common law. You will find references to foreign judgments scattered among the pages. Tax is different. Occasional reference to early English cases that have shaped our law can be found. So, too, can the odd mention of a New Zealand case. But judges are restricted to the statutes that they are interpreting. In the highly codified tax law area there is little room for judges to use comparisons and gain insights from other jurisdictions.

Comparison and insight should happen during the formulation of the law. Yet, there is little sign that this is done. When the professional bodies put forward proposals for reform from time to

time, usually based on a careful analysis of the operation of similar laws in other jurisdictions, the response from government is muted, if it can be heard at all. Politicians have their own agendas driven by domestic policy needs. They do not seem to want to create an efficient and carefully constructed set of rules, designed to achieve clear and specific objectives. Rather they produce an unattractive hodge-podge that is subject to immediate and continued correction.

The "non-contentious" first tranche of the new Tax Act required 250 amendments even before it could pass through parliament. If there were so many errors before parliament, it can be guaranteed that many more will need patching-up by later legislation. The House of Representatives Standing Committee on Legal and Constitutional Affairs reported in 1993 that each page of primary legislation receives an average of five minutes scrutiny by parliament. To discover 250 amendments, upon such limited scrutiny, leaves the taxpayer with little confidence that all the errors have been found. If there are more errors, there will be a long wait before they can be amended, based upon the experience of the Australian Taxation Office ("ATO") in attempting to gain space on the legislative agenda for previous Technical Corrections bills.

Tax laws impact more than almost any other laws on the ordinary citizen. They should be designed and crafted out of the finest materials. Those materials should include the experience of other jurisdictions. We should learn from the mistakes already made elsewhere and should incorporate the latest ideas from both inside and outside Australia. Taxpayers are tired of the ATO and politicians trying to defend what is, to a large extent, indefensible. Tax law design in Australia is no science or art. It is a mish-mash.

Co-operation: a help or a hindrance?

The ATO is to be commended for its policy of involving the tax community in the development of its rulings, internal policies and guidelines. Community involvement in the tax administration and collection processes provide essential feedback. Research has long shown that compliance should improve as a direct result.

The tax community has entered into this arrangement wholeheartedly. The professional bodies provide detailed and extensive comments on almost every ruling that issues. They attend numerous meetings called by the ATO. An immense amount of time and effort, with the associated expense, is contributed to this process. Do the results reflect the input?

Increasingly, the final rulings reflect little of the contribution made by the professional bodies. Legislation is introduced that pays scant regard to the concerns of the tax community, expressed when the law was in draft form. At National Tax Liaison Group Meetings, the minutes show a willingness to listen but little action from the ATO. ATO officers may satisfy taxpayer concerns in small matters, but on larger issues there is constant delay and little obvious result.

Is the involvement worth the cost for the taxpaying community? Surely not, if they are not being heard. Surely not, if the ATO holds out the final rulings, legislation or other "result" as the product of co-operation between the ATO and the professional bodies, when it does not, in fact, respond to the professional bodies' reasonable concerns. It could be more productive for the professional bodies to operate independently of the ATO. Then, if their contribution is ignored, they can oppose the relevant law or ruling publicly without the ATO holding it out as a joint effort. The ATO might then realise that involvement of the taxpaying community comes at a cost: a willingness by the ATO to listen to, and take account of, their reasonable concerns and interests.

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