

# AUSTRALIAN TAX REVIEW

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## EDITORIAL

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## ARTICLES

### **From moral aspiration to rule of law – lessons from the United States in treating taxpayers fairly** – *John Bevacqua*

Tax authorities both in Australia and the United States aspire to treat taxpayers fairly. This article assesses the extent to which these aspirations have been recognised in formal legal rules in both jurisdictions. It shows that the United States Congress has enacted a number of statutory provisions designed to promote fair treatment of taxpayers and provide formal sanctions against the Internal Revenue Service for failures to treat taxpayers fairly. In contrast, in Australia, the Tax Office’s commitment to treat taxpayers fairly remains little more than an aspiration or moral duty. There has been minimal recognition by either the judiciary or the legislature of any legally enforceable taxpayer right to fair treatment. From the analysis of the two jurisdictions, this article identifies a number of lessons for Australia from the United States’ approach to providing taxpayers with legal rights to fair treatment. ....

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### **A mandatory information disclosure regime to strengthen Australia’s anti-avoidance income tax rules** – *Nicole Wilson-Rogers and Professor Dale Pinto*

This article argues that the enactment of a comprehensive mandatory disclosure regime could significantly augment Australia’s existing suite of anti-avoidance strategies by informing and better targeting Australia’s fight against tax avoidance, both at a domestic and international level. The article considers two different existing models of comprehensive disclosure regimes: those currently in place in the United Kingdom and Canada. Following an analysis of these regimes, and drawing on the legislative models utilised in these jurisdictions, the article suggests key elements for a comprehensive disclosure regime in Australia. ....

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### **Conceptualising “charity” in State taxation** – *GE Dal Pont*

With the commencement of the Charities Act 2013 (Cth) on 1 January 2014, the term “charity”, when it appears in federal statute law, takes the meaning prescribed by that Act. Yet for State and Territory legislation, where the term “charity” is used but not specifically defined, there remains a need to resort to the common law concept of charity, developed over hundreds of years. The object of this article is to target the meaning of charity in the context of State and Territory taxing legislation. Relying predominantly on the common law, the breadth of the concept of charity for State and Territory taxing purposes has, together with the common law concept of charity, broadened to a degree that increasingly divorces the concept from its meaning in ordinary parlance. Indeed, the same may be said of the ostensibly broader concept of charity introduced at a federal level by the Charities Act 2013, chiefly by s 12(1). The article seeks to identify the lack of conceptual underpinning of the term “charity” at common law as applied in Australia, and ultimately calls for a refocusing (and indeed sharpening) of the legal concept of charity to align more

closely with its dictionary meaning. As the substantive backdrop to this recommendation, the article briefly catalogues the policy bases for tax exemptions for charities, and explains the historical genesis and development of the concept in the law, informed by the reasons for which the law must give meaning to the concept. The core part of the article investigates what are described as the “conceptual parameters” of charity, and serves to highlight the divide between the concept as it is understood by the law and how it is conceived in a dictionary (or ordinary) sense. .... 48