

AUSTRALIAN TAX REVIEW

Volume 52, Number 4

2023

ARTICLES

An Introduction to the Special Issue on Tax Dispute Resolution – General editors:

Dale Pinto and Kerrie Sadiq

Guest editors: Binh Tran-Nam and Michael Walpole

The introduction of the present issue serves a dual objective. First, it furnishes the background and context, delineates the scope, and elucidates the rationale behind the issue's specific focus on tax dispute resolution. Second, it offers a concise summary overview of the subsequent four articles featured in this special issue. 207

Alternative Tax Dispute Resolution: Perspectives from ATO Officers – Michael Walpole, Binh Tran-Nam and Sally-Ann Joseph

Tax disputes between taxpayers and tax administrators while common, are costly to resolve, especially if they go beyond the tax administration agency for resolution. Attention by tax researchers and tax administrators has recently been paid to alternative dispute resolution (ADR) as an appropriate way for resolving tax disputes. The principal aim of this article is to examine ADR as a tool for resolving tax disputes and recent developments in alternative tax dispute resolution (ATDR) in Australia. The Australian Taxation Office (ATO) has adopted and implemented many initiatives that appear to improve its performance in ATDR which can in turn save time and costs for all stakeholders of the tax system, especially taxpayers. Our interview-based study suggests the commitment and direction of the ATO with respect to ATDR and raises the question whether these positive early steps can be maintained or even improved. 211

The New Zealand Disputes Process Reconsidered: Time for Change? – Andrew Maples

The tax disputes resolution process in New Zealand was reformed in 1996 following the report of the Organisational Review Committee, Organisational Review of the Inland Revenue Department in 1994. In late 2019 and early 2020 the author led a study of the dispute resolution process utilising interviews with tax practitioners and representatives from Inland Revenue. The study had two objectives, the second objective essentially growing out of the first. The initial (primary) objective was to analyse the facilitated conference phase. While overwhelmingly supportive of the facilitated conference process, a number of the tax practitioners interviewed also expressed concerns over the dispute resolution process generally – including the issue of the “burn-off” of taxpayers and made suggestions to improve the dispute process. Thus the second objective of the study – to document the tax practitioner observations, concerns, and (where relevant) possible recommendations for improvement to the overall tax dispute process – emerged. The issues raised in this research by interviewees, and their suggestions for reform to the tax dispute process, are considered in this article. 230

The Current Status, Issues, and Prospects of China’s International Tax Dispute Resolution Mechanism – Yan Xu

China attaches great importance to and actively participates in the implementation of the Base Erosion and Profit Shifting Action Plan, revising bilateral tax treaties with other countries multiple times to proactively address tax dispute cases. However, since 2016, there has been a significant increase in new tax dispute cases, highlighting the urgent need for China to enhance its capacity in resolving international tax disputes and establish a comprehensive and efficient dispute resolution system. This article analyses the current operation of China’s international tax dispute resolution mechanism, identifying issues such as the need for optimisation of bilateral tax treaties, inefficiencies in the operation of the mutual agreement procedure, and inadequate taxpayer participation. Additionally, the necessity and feasibility of introducing a mandatory arbitration mechanism in bilateral tax treaties are addressed, providing specific design recommendations for such mechanism. Furthermore, alternative tax dispute resolution mechanisms are also explored. 256

International Tax Disputes: Bringing the States Back In – Nolan Sharkey

This article reviews international tax policy, treaties, and the nature of disputes to challenge common beliefs as to what states want in international taxation and what the interests are in tax disputes. It argues that states are implicitly part of all tax disputes on both sides of the dispute and that the taxpayer versus revenue conceptualisation is inadequate. It calls for a reconsideration of thought in these areas if progress is to be made in justice in international taxation. 268

VOLUME 52 – 2023

Table of Authors	283
Table of Cases	285
Index	291