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# TAXPAYERS RIGHTS AS HUMAN RIGHTS – A CRITICAL ANALYSIS

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## ABSTRACT

Taxpayers' Rights are today the key issue in a system authentically founded on liberty. The study of the relationship between tax authorities and taxpayers defines the balance between authority and liberty and highlights the limits of the fiscal Constitution in a wider institutional context. If perspective in contemporary distressed democracies, the comprehension of the crucial importance of taxpayer rights and duties becomes essential for the functioning of democratic systems. There is a drawback to the general acceptance of the concept of rights for citizens. With popularity comes generalisation and blurred definition: taxpayers' rights are no exception. If taxpayers' rights are becoming more commonly accepted, it is largely due to a historical transformation in attitudes towards taxpayers' rights. There is still significant divergence in approach, particularly where the nuances of culture and a different perspective provide curious disparities in the way rights are chosen for protection in different jurisdictions. Given the relative infancy of taxpayer right protection, it is instructive to review the different approaches to administering such protection. A comparative analysis often reveals shortcomings in our own approach. It also offers a salutary reminder to those of us in western democracies of how much we should appreciate our own system for the benefits it does provide. A broad overview of the main areas where taxpayers have rights. It provides a useful guide to practitioners; administrators and researchers. Procedural and administrative rules within any tax system are highly complex. It is easy to be overwhelmed by the content and to miss the gaps that exist in taxpayer protection. The guide can be used to identify the strengths and weaknesses of any system.

## INTRODUCTION

When considering the so-called 'Form of the State', the traditional civil law reference is to the relationship existing between Governors and Governed in each historical period. From a comparative perspective it is interesting to note that the above-mentioned expression is just a way to consider, from an Anglo-American perspective, the concept of 'Constitution' which, in fact, includes State-citizen relationship and involves, beyond the rule of law, customs, traditions, jurisprudence, Justice and Liberty. It is a process that starts from law – namely its shape and structure -, and goes to the essence, the substance, the dynamic unit that outlines the system of values. And it engages also the 'guardian' of those values: The Constitutional or Supreme Court. No doubt the above-mentioned relationship is assuming a crucial role in the evolving context where contemporary democracies are experimenting with new challenges: the duty to meet the challenge to adopt new constitutional forms where 'law in books' has to correspond, and concur, with 'law in action' and, furthermore, with 'law in context'. How is it possible to realize that? How can it affect the comprehension, and, above all, the application of taxpayer rights? Through an original approach, we can work out the importance of that relationship (Governors-Governed) as it may be examined either by putting authority and liberty on the same ground (liberal constitutionalism), or on different grounds (Jacobean constitutionalism). The lexicon used may coincide in verbal use, but it makes a difference in substance. Italy is a country whose cultural-institutional matrix keeps close to a Jacobean angle since, when reasoning about the Constitution<sup>1</sup>, it prefers the doctrine of the State over the idea that it implies a "mutually mandatory agreement"<sup>2</sup>. Consequences are undeniable: the distance between citizens and the system of power is enormous. Especially between taxpayer and tax authority a fierce feeling of reciprocal repulsion persists. The result is an enormous waste of public money and unlimited tax evasion. That is the reason why a relationship consistent with what is called a Constitutional State is to be built. Experiences gained in the common law jurisdictions and debates and studies at international level, make it clear that taxpayers' rights

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<sup>1</sup> For a discussion on the concept of Constitution and its implication from a comparative perspective that distinguishes common law from civil law systems, see G. TIEGHI, *Fiscalità e diritti nello Stato costituzionale contemporaneo. Il contribuente partner*, Jovene, Napoli, 2012, [http://www.jovene.it/public/allegati/38671\\_Sommario\\_Indice-Tieghi.pdf](http://www.jovene.it/public/allegati/38671_Sommario_Indice-Tieghi.pdf) pp. 1-55, and specifically, on the meaning of the term Constitution that includes State-citizen relationship, see p.6.

<sup>2</sup> The authentic Italian expression is "patto reciprocamente obbligante": F. BARBAGALLO, *Da Crispi a Giolitti. Lo Stato, la politica, i conflitti sociali*, in AA.VV., *Storia d'Italia*, vol.5, by G. Sabbatucci e V. Vidotto, Laterza Roma-Bari, 2010, 6. But that is nothing different from the "unwritten social contract between the government and its taxpayers" Nina Olson has more than once mentioned to realize the new vision among 21st century tax authorities (not only in the US): National Taxpayer Advocate (NTA), 2013 Annual Report to Congress, vol.2, in [www.taxpayerAdvocate.irs.gov/2013AnnualReport](http://www.taxpayerAdvocate.irs.gov/2013AnnualReport), p.20.

belong to the category of Human Rights<sup>6</sup> and that the perspective of human rights is based on tax compliance. How can civil law systems, as experienced in Italy, find a way to embrace the premise of taxpayer rights being human rights<sup>3</sup>? How can we conceive the idea of ‘tax compliance’ making a great effort to drop out the ‘power perspective’ and to approach a different dynamic perspective where the taxpayer has his own role in the institutional system<sup>4</sup>? And finally: does the dichotomy of the civil-common law jurisdiction still have an influence on how taxpayer rights must be considered? Or is the traditional classification nowadays useful merely to offer a systematic framework? Tax compliance cannot be for the outcome of repression, but the positive implication of education. That presumes that the taxpayer be not just conceived, but treated as a person, with its individual dignity<sup>5</sup>, as the centre of assignment of rights and obligations under the First Part of the Italian Constitution, in a perspective of cooperation, not juxtaposition. Certainly, it is a question of hard cooperation which turns out to be a problem of Constitutional Comparative Law, not of Tax Law. Considering this background, the key issues of the present paper can be outlined as follows: first, the relationship between tax authorities and taxpayer as a constitutional problem; second, the search for a legal model and the legal techniques that are necessary to make a bill of rights a fundamental part of legal sources, in order to respond, starting from the Italian case, to the promise of a Taxpayer Charter; third, the redefinition of a new role for the contemporary taxpayer to accomplish an updated interpretation of dignity as item of balance between liberty and responsibility. The tax practices of multinational enterprises and wealthy individuals are being increasingly questioned and scrutinised. Tax havens and bank secrecy are under attack. Tax abuses are in the media spotlight and on the international political agenda. But why are tax abuses becoming so important? First, there is the immense magnitude of the issue. The best estimates tell us that tax abuses are the most significant illicit financial flow out of the developing world, eclipsing the amount of official development aid that is invested in those countries. There is a growing understanding that countering tax abuses and improving tax enforcement in developing countries should be a key focus for international efforts to combat poverty and contribute to sustainable development. In developed countries as well, there is a strong impetus to confront tax abuses to shore up domestic revenues in the aftermath of recent financial crises. Secondly,

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<sup>3</sup> G.TIEGHI, Taxpayer and Human Rights: the Taxpayer Advocate and the Challenge of Contemporary Democracies Towards New Constitutional Forms, in *Dir. pubb. comp.eur.*, no.4/2014, pp.1475-1488.

<sup>4</sup> G. TIEGHI, *Fiscalità, Compliance e Stato costituzionale*, in *Federalismo fiscale*, no.1-2/2013, pp. 73-128.

<sup>5</sup> To have an updated idea of the importance of the constitutional dimension of human dignity in contemporary and comparative systems, and specifically, considering taxpayers’ rights, the outcome and implications of the study of “human dignity as a framework right”, see the relevant work of A.BARAK, *Human Dignity. The Constitutional Value and the Constitutional Right*, Cambridge University Press, Cambridge, 2015

there is an important ethical dimension to the issue. Many politicians, advocacy groups and prominent individuals are questioning the fairness and morality of sophisticated tax planning strategies that result in individuals and corporations not paying a fair share of tax – and perhaps not paying any tax at all. Especially in a context of persistent poverty and rising inequality between and within nations, the fact that tax strategies that produce unfair results may be technically legal is no longer a sufficient justification for their continued use. Wealthy individuals and multinational enterprises face increased risks of public censure if their tax practices are seen to be abusive. This leads to several important legal and policy questions related to tax abuses: Where does one draw the line between legal tax avoidance and illegal tax evasion? What types of tax structures and transactions have the greatest impact on the revenues of developing and developed countries? What are the most effective reforms required to confront tax abuses? What are the responsibilities of states and business enterprises to implement those reforms? What is the role of lawyers and the legal profession to confront the challenge of tax abuses? The International Bar Association's Human Rights Institute (IBAHRI) has formed the Task Force on Illicit Financial Flows, Poverty and Human Rights to reflect upon these questions from the perspective of international human rights law. The Task Force's mandate is rooted in an IBAHRI Council Resolution that links extreme and endemic forms of poverty with potential violations of human rights. For this reason, the Task Force has given a particular focus on the tax abuses that have negative impacts on developing countries. This report of the Task Force is based upon interviews with a wide range of stakeholders from diverse perspectives and consultations, in the SADC region, Brazil and Jersey. The Task Force found that tax abuses have considerable negative impacts on the enjoyment of human rights. Simply put, tax abuses deprive governments of the resources required to provide the programmes that give effect to economic, social, and cultural rights, and to create and strengthen the institutions that uphold civil and political rights. Actions of states that encourage or facilitate tax abuses, or that deliberately frustrate the efforts of other states to counter tax abuses, could constitute a violation of their international human rights obligations, particularly with respect to economic, social, and cultural rights. In the context of the developing world, the tax abuses of greatest concern of the Task Force included: transfer pricing and other cross-border intra-group transactions; the negotiation of tax holidays and incentives; the taxation of natural resources; and the use of offshore investment accounts. Secrecy jurisdictions are also a concern because of their role in facilitating tax abuses. From the perspective of the Task Force, the international standards that promote greater transparency and more effective exchange of information for tax purposes need to be further developed. There has been some important

progress at the international level in recent months and momentum is gaining towards a multilateral system of automatic exchange of information – which will put tax authorities in a better position to counter tax abuses. A human rights analysis can contribute to the link that is increasingly being made between domestic resource mobilisation and sustainable development. As we approach the final milestone of the United Nations (UN) Millennium Development Goals in 2015, the international community has begun a new global conversation about what are the best partnerships and vectors for effective poverty alleviation and sustainable development. Countering tax evasion should be part of the strategy for developing countries to diminish their dependence on foreign assistance, combat poverty and fulfil their international human rights obligations. The Task Force’s human rights analysis begins by making a link between human rights and extreme poverty. For instance, the UN Human Rights Council has recently adopted Guiding Principles on Extreme Poverty and Human Rights that describe how poverty is connected as a cause or consequence of violations of different human rights and all the key human rights principles – ranging from the right to food, the right to health, the right to education and the right to social security, to the principle of transparency. Considering the negative impact that tax abuses have on poverty and human rights, the state has several obligations to counter tax abuses. These flow from states’ obligation to use the maximum available resources to progressively realise human rights – including the obligation to confront tax abuses as part of an overall plan to strengthen financial and tax governance. Furthermore, states have the obligation to ensure coherence between corporate, fiscal, tax and human rights laws and policies, both at the domestic and international levels. This includes the corollary obligations to avoid corporate, fiscal or tax measures that have retrogressive impacts on human rights. The obligation to do no harm with respect to economic, social, and cultural rights should be understood to include an obligation for states to assess and address the domestic and international impacts of corporate, fiscal and tax policies on human rights. States have an obligation of international cooperation and technical assistance to support the realisation of human rights. This should be understood to extend into international cooperation in the field of taxation. Notably, states that contribute to the momentum towards greater transparency and effective exchange of information – including with developing countries – are supporting human rights. Conversely, those that cling to the last vestiges of secrecy and thwart the emergence of effective information exchange are contributing to further infringements of human rights. Tax Abuses, Poverty and Human Rights Business enterprises also have the responsibility to respect human rights through their corporate structures and throughout their operations. They can demonstrate that they respect human rights when they

have appropriate policies and due diligence procedures to ensure that they are not having negative impacts on human rights. Multinational enterprises, as well as their advisers and financiers, need to understand that their tax planning strategies have potential negative impacts on human rights. Conversely, greater transparency and corporate social responsibility in relation to tax practices has the potential for significant contributions to sustainable development and positive impacts on human rights. Lawyers have a special role in addressing tax abuses. As business enterprises, law firms also have a responsibility to respect human rights according to the UN Guiding Principles on Business and Human Rights: they should take due diligence measures to identify, prevent, mitigate, and account for their impacts on human rights. Merely complying with tax law is not enough when this results in the violation of human rights. Responsibility for human rights includes situations where lawyers are associated with third parties' actions that violate human rights – including by their clients. In such situations, lawyers should use their influence and leverage to encourage their client to not engage in that conduct. Both states and businesses should provide better access to remedies. Currently, to address the negative impacts of tax abuses on poverty and human rights, the most effective remedies remain in the realm of domestic tax authorities. Consequently, it is important to strengthen good fiscal and tax governance and enforcement capacity in developing countries. Transparency and access to information are important human rights principles that support more effective remedies for tax abuses, especially in relation to the movement towards more effective and automatic exchange of tax information between authorities, as well as greater disclosure of information of the financial and non-financial impacts that business enterprises are having on a country-by-country basis. At present, there are few human rights mechanisms that can deal effectively with tax abuses. However, several UN mechanisms certainly have the mandate and potential to articulate the links between tax abuses, poverty, and human rights on an authoritative basis. Further attention and debate on tax abuses from a human rights perspective is important for developing more coherent international standards and good practices for states, multinational enterprises and their advisers and financiers. In the short term, human rights can also make a valuable contribution by drawing further public and political attention to this fundamentally important issue.

#### **THE CHALLENGE OF TAX ABUSES, POVERTY AND HUMAN RIGHTS**

During the Task Force's research and consultation, tax abuses have frequently been in the spotlight, grabbing the attention of the media and the public. At a time when the global economy struggles to recover from recent financial crises, politicians and policymakers are

making tax issues a priority as they are confronted by tough decisions about austerity measures, spending cuts and the need to find revenues to maintain social programmes. High-profile investigative reports, leaks of offshore banking information and civil society campaigns have called into question the tax practices of wealthy individuals and multinational enterprises. It appears that the moment is ripe for a renewed public debate about the role of tax in society and the global economy:

- What are the boundaries between legitimate tax planning, illegitimate tax avoidance and illegal tax evasion?
- Is there a legitimate role for secrecy jurisdictions in the context of an interconnected global economy?
- What international laws, policies and mechanisms are required to address tax abuses in the 21st century?
- How do tax abuses prevent developing countries from raising sufficient resources to alleviate poverty and meet the needs of their citizens?
- How are human rights relevant to these tax matters?

This report presents the findings of the Task Force in relation to these questions. In general, stakeholders noted that tax abuses have not often been approached from a human rights perspective; however, there are indications that this conversation about human rights and tax is beginning.<sup>6</sup> Some stakeholders felt that human rights can provide a useful frame of reference for greater engagement by citizens in the complex and technical issues related to tax. Others stressed the importance of clarifying the human rights responsibilities of states, business enterprises and other actors to encourage improved domestic tax policies and strengthened international cooperation efforts to confront tax abuses. Given the international dimension of many tax abuses, stakeholders stressed that a new global policy debate is needed to define obligations at the state and supra-state level to address the current imbalances of information, income, and power. Tax has the potential to be an instrument to confront these imbalances and inequalities. So, do human rights.

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<sup>6</sup> Recently, some tax justice and human rights organisations have started to make the link between tax abuses and human rights. For instance, the Business and Human Rights Resource Centre has created a section on its website dedicated to 'tax avoidance' (see: [www.business-humanrights.org/Documents/Taxavoidance](http://www.business-humanrights.org/Documents/Taxavoidance)) and the Tax Justice Network in Germany has recently published a briefing paper on 'Taxes and Human Rights'

Dealing with the IRS can be a complicated and involved process. Know your rights as a taxpayer to make the process a little easier. The IRS has adopted a “Taxpayer Bill of Rights,”

As a taxpayer, you have:

1. **The Right to Be Informed.** You have the right to know how to follow the tax laws. You are entitled to clear explanations of the law. Anytime you receive a notice from the IRS, the agency must explain its reason for contacting you. If you have questions, call the number located at the top right corner of most notices.
2. **The Right to Quality Service.** You have the right to prompt and professional assistance when dealing with the IRS. The people you speak with should be respectful, and help you understand the information they provide to you. You have the right to file a complaint for poor service. First, ask to speak with a supervisor.
3. **The Right to Pay No More than the Correct Amount of Tax.** You have the right to only pay what is legally owed. You can schedule an appointment with your local Volunteer Income Tax Assistance (VITA) site to have your tax returns done by a professional free of charge.
4. **The Right to Challenge the IRS and Be Heard.** You have the right to disagree with the IRS and to submit documents that support your side. You have the right to receive a quick and fair response from the IRS. You can expect to get a reply from the IRS within 30 days.
5. **The Right to Appeal an IRS Decision.** You have the right to appeal most IRS decisions when you disagree. You have the right to take your tax case to court.
6. **The Right to Finality.** You have the right to know how much time you must challenge the IRS. You have the right to know how much time the IRS can take to audit a particular tax year and when an audit is complete. In most cases, the IRS can audit the past 3 years of tax returns. In the case of more substantial errors, the IRS can go back 6 years. You should keep at least the last 6 years of tax returns for your records.
7. **The Right to Privacy.** You have the right to expect that any IRS action will comply with the law and will only be as intrusive, as necessary. The IRS will also respect all other rights you are owed.
8. **The Right to Confidentiality.** You have the right to expect that any information you provide will not be given to anyone without your permission or unless required by law. Only after you sign a release form can your information be shared.



**9. The Right to Retain Representation.** You have the right to hire a lawyer when dealing with the IRS. You also have the right to know that if you cannot afford a lawyer you may be eligible for assistance from a Low-Income Taxpayer Clinic.

**10. The Right to a Fair and Just Tax System.** You have the right to expect the tax system to consider all facts and circumstances that might affect your ability to pay.

#### **PROTECTION OF TAXPAYER’S RIGHTS**

There is now a clear and undeniable relationship between human rights and taxation with human rights directly influencing different facets of the tax relationship, both materially and formally. Human rights materially influence the concept of “fair” taxation to balance the effective enjoyment of the fundamental rights of the people, in conditions of freedom and dignity (such as education, health, work, etc.) against the adequate financing of State activity aimed at the procurement of essential public services. Human rights facilitate the formal recognition of a taxpayer’s position vis-à-vis tax claims and, therefore, their right to participation and defence in administrative and judicial proceedings related to the assessment of the tax liability. Human rights further assist to define the relationships between the tax administration and individuals.

Globalization and the growing internationalization of tax law have added further complexity to the analysis. The balance between the prevention of international multiple taxation (the result of cross-border transactions in an environment of growing globalization) and the fight (of States) against international tax avoidance, tax evasion and tax fraud (particularly evident during the BEPS Project) has resulted in the development of a tangled network of “hard” and “soft” law regulations. Human rights considerations unquestionably play a critical role in ensuring freedom and dignity with respect to the interpretation and application of such regulations.

The current political climate and response to calls for “tax fairness” has led to the growth of the investigative powers of tax administrations, aimed at tackling both tax avoidance and evasion, as well as the so-called “aggressive tax planning”. Such increased powers must be balanced with the provision of timely and effective protection to taxpayer’s rights. From the current research (see below) it is possible to establish the current principles, minimum standards and best practices that ensure the enjoyment of those taxpayer rights (within the scope of human rights). It is equally important, considering the growing powers of tax administrations, to continuously update and aid in the further development and application of

such principles, standards, and practices. The Observatory on the Protection of Taxpayers' Rights (OPTR) will identify principles, minimum standards, and best practices for the effective protection of taxpayers' rights in the ambit of tax relationships. It will also allow the permanent monitoring of global compliance with such minimum standards, as well as their amendment and development in the different regions of the world (defining whether such may qualify as either a universal or regional standard). This monitoring function will assist the OPTR to identify areas of sensitivity and potential challenges to the human rights deriving from amendments to law or administrative and judicial practices. It may further raise public awareness about human rights in the field of taxation. The OPTR work is relevant for governments, taxpayers, and different international organizations on human rights. It demonstrates the link between human rights and taxation and raises awareness as to the potential impact of an excessive tax burden or the execution of administrative or judicial processes where these rights are limited or ignored. Other observatories and international organizations, such as the Office of the United Nations High Commissioner for Human Rights, the Council of Europe, the Ombudsman of the European Union, the African Commission on Human and Peoples' Rights, the Asian Human Rights Commission, and the Organization of American States, among others, may be interested in the work of the Observatory, as a forum that provides information in a neutral and impartial way and satisfies high technical standards. Similarly, the International Courts on Human Rights, such as the International Criminal Court, the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court of Human and Peoples' Rights, may consider the information developed by the OPTR useful.

### **BENEFITS**

The OPTR will facilitate:

- The creation of a database on the minimum standards for the protection of taxpayers' rights, the status of the legal framework and the case law on the matter.
- The organization of seminars and conferences to discuss human rights in the context of tax-related issues and contributing proposals.
- The development of documents to contribute to the knowledge, expansion, and awareness of the connection between human rights and taxation.
- Assistance to government authorities on human rights/taxation matters, training and providing tools to their personnel for the implementation of best practices and the

domestic monitoring of the minimum standards for the protection of taxpayers' rights, as an instrument for the achievement of an efficient public administration.

- Providing information to the public regarding how taxation may adversely affect the guarantee of human rights and how a balance can be achieved.
- Raising awareness on the clear linkage between human rights and taxation.

#### **A CHANGING CONTEXT FOR TAXPAYER RIGHTS: PRAGMATIC RIGHTS**

Taking a step back, we are faced with domestic tax systems that must operate on a global stage. It is often beyond the capacity of politicians, administrators, lawyers, and tax advisers, let alone taxpayers, to make sense of disparate taxes systems operating at different levels within a nation state.<sup>7</sup> Now they are being asked to operate much more intentionally in a global context without a global government, but where individual nations devise and apply their own rules in their own way. Bilateral and multilateral treaties bring some clarity, but deep opacity remains. There are fundamental issues that each jurisdiction confronts. Do the general laws provide sufficient protection to taxpayers? If not, should specific protection for taxpayers be provided by law, or does this make the remedies too prescriptive, specialised, and narrow? On the other hand, is administrative remedy and flexibility of little help to a taxpayer in extreme circumstances? How do we balance the competing principles so that the rule of law is seen to be reasonably fair and just and, in doing this, how should we adapt for culture and context both domestically and across borders? A significant shift has occurred in recent decades. Taxpayer rights debates in the last two decades of the 20th Century focused on developing an understanding of taxpayer rights and how they might be implemented.<sup>8</sup> The context was often framed as one of legal versus administrative rights. How a taxpayer might enforce a right was a critical issue. Administrative rights and service charters were not recognised by many as providing sufficient protection and therefore meaning or substance as taxpayer rights.<sup>9</sup> However, the more research has emerged to show the importance of trust in society and its institutions, the more revenue authorities have eased back on the levers of power and coercion to apply the full panoply of measures that can engender voluntary compliance.<sup>10</sup> In one sense, this can be treated with skepticism from a rule of law

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<sup>7</sup> Simon James and Alison Edwards, 'Developing Tax Policy in a Complex and Changing World' (2008) 38(1) *Economic Analysis and Policy*, 35.

<sup>8</sup> P Baker and AM Groenhagen, *The Protection of Taxpayers Rights – An International Codification* (2001 European Financial Forum); Bentley, above n 20; and Sawyer, above n 20.

<sup>9</sup> My own views have changed since D Bentley, "Taxpayers' Charter: Opportunity or Token Gesture?" (1995) 12 *Australian Tax Forum* 1, but see CIOT, above n 20, for contrary views.

<sup>10</sup> Ayres and Braithwaite, above n 12, V Braithwaite above n 12 and A Prinz, S Muehlbacher and E Kirchner, "The slippery slope framework on tax compliance: An attempt to formalization" (Feb 2014) 40 *Journal of Economic Psychology*, 20

perspective. One of the fundamental features of a legal rights framework is enforceability.<sup>11</sup> In another sense, behavioural economics and psychology reinforces the view that practical enforceability most of the time, even without a right to take a matter to court, provides a powerful right. A concomitant development is the rise of the modern Ombud with specialised jurisdiction extending to matters of taxation. Whereas historically governments eschewed most forms of administrative review of revenue administration, the new approach to voluntary compliance recognised the importance of agencies designed to reassure taxpayers that the system is fair.<sup>12</sup> Sometimes administrative embeds are given traditional powers and are independent of the revenue authority, for example, the Australian Inspector-General of Taxation has assumed a complaint handling role in relation to tax matters. In essence, governments and revenue authorities have developed a much clearer basis for a self-interested recognition of taxpayer rights. The self-interest is based on taxpayer perceptions of fairness and an effort to establish trust levels that maximise voluntary compliance.<sup>13</sup> This means that although established theory and principles should govern our regulation and interaction, we have entered an era of what can be termed pragmatic right recognition.

## CONCLUSION

A theoretical framework must cater to the realities of diverse legal and tax systems. Furthermore, the framing of potential remedies, particularly in the administration of the law, must be cognisant of how these are most effectively accessible and enforceable in different systems. Nonetheless, fundamental principles and legal rules underpin any tax system and are suitable for application in diverse political, social and economic environments. They are designed to reinforce the ‘social compact’ and make society work. Fundamental taxpayer rights are best protected legally. However, it is equally important that there are additional layers to the legal system including independent offices such as a taxpayer Ombud. Taxpayer rights must be disseminated and understood by both tax administrators and taxpayers and their advisors. Law-in-action and the implementation of the pragmatic rights that represent the day-to-day reality of the tax system become an expectation. Legal rights increasingly combine with self-interested behaviours on the part of both tax administrators and taxpayers to create a system in balance that provides high levels of voluntary compliance. While compliance

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<sup>11</sup> A feature, for example, of HLA Hart’s framework for rule recognition in *The Concept of Law* (2nd ed, 1994 Clarendon Press) and WN Hohfeld’s jural relationships in *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1978 Westport). See further, DN McCormick, “Rights in Legislation” in PMS Hacker and J Raz (eds) *Law, Morality and Society: Essays in Honour of HLA Hart* (1977 Clarendon Press), 189.

<sup>12</sup> Alley and Bentley, above n 34, and C Alley, D Bentley and S James, “Politics and Tax Reform: A Comparative Analysis of the Implementation of a Broad-Based Consumption Tax in New Zealand, Australia and the United Kingdom” 24 (2015) 15 *Revenue Law Journal*

<sup>13</sup> , SR James, “The importance of fairness in tax policy: behavioural economics and the UK experience” (2014) 3 (1) *International Journal of Applied Behavioural Economics*, 1

frameworks can help to establish the appropriate balance, the power and trust relationships are being shaped by the changes in society. Among these is the emergence of alternative dispute resolution procedures and independent umpires, whose offices are given the power to protect pragmatic rights and to deal with systemic problems. The next decades are likely to see greater pressure on revenue. However, this will be balanced by technology in the hands of both revenue authorities and taxpayers. In states governed by the rule of law, it is likely that public scrutiny by taxpayers and their representatives will increase, facilitated by technology.<sup>14</sup> Similarly, there will be systemic analysis by independent bodies using enhanced data collection. The same wider scrutiny will likely and should increase the effectiveness of Ombud's as a critical accountability and monitoring mechanism. It will create an imperative for governments and revenue authorities to engage, communicate, and provide high levels of transparency in their activities. There will be an environment conducive to reinforcing state compliance with fundamental rights and the self-interested provision of pragmatic rights. The corresponding effect required to balance the limitations on the exercise of power will be an increase in voluntary compliance by taxpayers. The aim is an effective system where there is no need for intervention. There is a need in each jurisdiction to define rights, to provide appropriate and contextual means to enforce different rights, in a way that encourages voluntary compliance with taxpayer obligations. Recent developments in cross-disciplinary research demonstrate how the formulation and implementation of legal rules and law-in-action can improve to the benefit of both the state and its citizens. The more such insights can be incorporated effectively into the legal system, its operation, and compliance frameworks, the better the system will become. Ultimately society depends upon trust and a social compact that works. History is littered with examples of where this has broken down. Soft law supports legally enforceable rights to provide the glue that maintains civil society. Pervasive reliance on the enforceable legal rights law suggests that a system has broken and is moving towards a failing state. That is why relationships, understanding, transparency and trust are so important. Taxpayers need to understand this just as much as the tax authorities, for part of the social compact is for citizens to be persuaded that other citizens as well as the state itself can be perceived as operating legitimately.

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<sup>14</sup> United Nations, Guidance Note of the Secretary-General on Democracy.