CHAPTER 10

CONCLUSION

I   CONCLUSIONS ON THE HYPOTHESIS

The hypothesis was that it is timely and beneficial to articulate a Model of Taxpayers' Rights as a guide to best practice in tax administration. Chapter 2 provided an important basis for proving the hypothesis. It drew on legal theory to show that taxation is not a fundamental good in itself. Rather it is a limit on property rights as it requires a contribution of property from taxpayers to fund the operation of the state. The role of taxpayers' rights is in turn to provide limits on the taxing powers of the state. Discovering the content of those limits on taxing power formed much of the substance of the thesis as it sought to define enforceable rights and the mechanisms for their enforcement.

Chapter 2 found that the argument that there are no universally accepted standards from a subjective and relativistic perspective is overcome through the human rights literature, which recognises that some human rights are universally accepted and applicable. That tax systems are so diverse also does not present an impediment to the discovery of acceptable standards of best practice in taxation law. Rather it suggested that for developing countries a lower benchmark is required. A two-tier Model of this kind has some disadvantages and they included that: states may adopt only the basic level; states may not want to acknowledge that they are adopting only the basic level and therefore not adopt it at all; and a single standard is clearer and easier to adopt. However, the advantages of a two-tier Model included: a two-tier model is already in use in other areas of tax

administration; it could form a firmer platform for the existing dialogue between tax administrations; it recognises the reality of the international environment; and it provides support for foreign investment if a state can at least achieve the basic benchmark. The advantages also demonstrated that articulation of taxpayers' rights is both timely and beneficial.

Flowing from the proposition that a two-tier Model is feasible, the Chapter showed that a Model is also realistic. It demonstrated how states are increasingly accepting rights as limits on their sovereignty both domestically and internationally. It showed that the Model should not include obligations as that would expand it to constitute a Model tax code. Instead, the Model should focus on providing a benchmark for best practice in the provision of taxpayers' rights, for which there is a current need: The basis for the rights chosen should be general acceptance and conformity to accepted general principles of law and practice. The incentive for states to adopt the Model would be to improve voluntary compliance, enhance revenue collection, and improve the perception by taxpayers that their system is fair.

Chapter 2 provided the clear theoretical basis for a Model of taxpayers' rights. It also analysed why a Model is realistic, timely and beneficial in the current international policy environment – and feasible as it is possible to articulate acceptable common standards for inclusion.

Chapter 3 first analysed a wide range of major reports that have examined the reform of tax systems. Although they have used common terminology, it was necessary to analyse the content of the principles and to develop and synthesise a common core of accepted definition and meaning. Best practice in itself requires a basis for acceptance and Chapter 3 provided the tools to analyse the content and context of the rights articulated in subsequent chapters. The Chapter then examined how the content of the rights might be interpreted and whether there could be sufficient commonality to provide a core of

meaning to the rights chosen. It identified the difficulties that could arise in interpreting the rights contained in the Model based on an analysis of current international experience. However, it concluded that an understanding of the underlying principles in the context of divergent legal systems provided a strong foundation for the development of common standards.

Chapter 4 first assessed the need for a guide to best practice in relation to taxpayers' rights in the context of both national and international developments. It found that the mix of expanding government and an international focus on increased legal and administrative protection provided a firm basis for developing a comprehensive and complementary framework for the protection of taxpayers' rights. It then set out a classification of rights based on whether they are enforced legally or administratively. The classification built upon the theory established in Chapter 2, the principles and basis for interpretation examined in Chapter 3 and provided a comprehensive definition of each type of right that should be included in the Model and why. The analysis drew together legal, administrative, international and domestic threads from a range of sources, recognising the nuances in classification that are essential in the creation of an effective Model.

Chapter 5 built on the analysis in Chapter 4 and provided a critical and foundational basis for understanding the nature of rights through their method of enforcement. It demonstrated from an in-depth analysis and application of constitutional and alternative dispute resolution theory that there is scope for a wide range of measures to enforce taxpayers' rights effectively. The Chapter analysed each method of legislative and administrative enforcement and concluded that the method of enforcement in its particular context is critical to the scope, content and effectiveness of a right.

Chapters 6 to 8 provided a detailed analysis of individual rights to be included in the Model based on methods of enforcement described in Chapter 5 and an analysis of internationally accepted standards of best practice. The investigation required a number of

excursions into literature from related disciplines and to explore the impact of a range of international and domestic measures on the development of taxpayers' rights. All of these external influences served to reinforce the critical need for an articulation of best practice standards in taxpayers' rights: both in respect of its timeliness and the benefits it will bring to policy development.

Chapter 6 drew together the primary legal rights that underlie the fundamental operation of the tax system. Although they are drawn from a wide range of constitutional, human rights and other legislation in the different jurisdictions, they are founded in legal theory and are widely accepted as forming the basis for the effective operation of the law governing taxation. The Chapter recognised that in jurisdictions where primary legal rights do not exist, there is not only the most immediate need for them, but it will prove most difficult to introduce them.

Chapter 7 analysed the features of good tax administration and the rights that flow from it. The role, structure and accountability of revenue authorities is commonly analysed in the context of management and compliance theories. Chapter 7 provided a detailed legal analysis. It provided support for principles of good governance essential to the effective administration of a tax system. Flowing from this, it analysed the appropriateness of principles of good practice, including service standards, performance indicators and elements of charters of taxpayers' rights. It was found that they provide the practical administrative framework necessary for the protection of taxpayers' rights. Chapter 8 analysed rights which flow from the essential functions and operation of the tax administration. It used a functional analysis to examine the rights attaching to information gathering, audit and investigation; assessment; sanctions and enforced collection; and objection and appeal. Drawing from a wide range of sources and materials it articulated standards in each area that are supportable measures of international best practice. Further support for the rights was found in the underlying principles established in Chapter 3. Wide

variation in law and practice was discovered in the detailed implementation of law and procedure. However, there was a common core content that allowed the clear articulation of best practice standards.

Chapter 9 allowed the rights identified in earlier chapters, with those elements of enforcement that could be included in the Model to flow directly into it. It proved the hypothesis by articulating a Model of Taxpayers' Rights as a guide to best practice in tax administration. Previous chapters showed that the Model is timely and will prove beneficial.

II   IMPLICATIONS FOR THEORY

The thesis provides a theory of taxpayers' rights grounded in general legal and rights theory. This is a new field of knowledge. As with all original exploration it requires development and will change as it matures through discussion, analysis and refinement. However, it does contribute the first step along this path.

Chapter 3 refines in a new way the definition and application of generally accepted principles that underlie tax systems, building on earlier work by Alley and the author. The common definition can be applied in all areas of tax administration.

Again building on earlier work by the author, Chapter 4 provides an original classification of taxpayers' rights linked to their method of enforcement. Its early form has been shown in the relatively limited literature available in the area of taxpayers' rights to have influenced or proved useful to most writers in the area. The developments in this thesis are likely to continue to provide the framework for analysis of taxpayers' rights.

The analysis of enforcement mechanisms and their application to tax administration is innovative and builds on earlier work by the author.

Chapters 6-8 draw together a comprehensive model of taxpayers' rights from existing theory and practice. Each of the individual rights has been explored in great detail individually elsewhere in the literature. The analysis and synthesis draws from a broad range of diverse materials across disciplines and jurisdictions to provide a comprehensive set of standards of best practice in tax administration. It has not been carried out before in this depth and is likely to prove a useful aid to further comparative analysis and its practical implementation. This will follow the example of earlier comparative studies on substantive taxation law and tax administration more generally.

III   IMPLICATIONS FOR POLICY AND PRACTICE

It is hoped that the research in this thesis will provide useful material to assist a range of different policy makers, academics and practitioners, including:

- policy makers, officials and consultants advising on standard setting, and tax legislation and drafting, particularly those in developing countries and countries in transition, for which the content of the thesis will provide a rationale for including taxpayers' rights in tax law together with practical guidance on how to achieve it;

- revenue authorities and their advisers who can draw on the work to provide both a quality control measure of substantial elements of their administration of the tax system and an example of what they need to do to achieve best practice;

- taxpayer representative organisations and informed taxpayers, who can use relevant material from the thesis as support for submissions to government and revenue authorities and know that it is appropriately grounded in legal theory;

- tax practitioners, who can apply relevant parts of the thesis to assist in framing advice for clients in the area of taxpayers' rights; and

- academics interested in comparative law and practice as the basis for further research and to inform their students.

The best outcome would be for the international standard setters at organisations such as the OECD and CIAT to draw substantially on the material in the thesis to establish a comprehensive framework for taxpayers' rights.

IV   IMPLICATIONS FOR FURTHER RESEARCH

There are several areas that would benefit from further research including:

- the analysis behind the Model would be strengthened considerably by a collaborative comparative project designed to include a range of theories and examples from jurisdictions representative of the different families of law and stages of development;

- the content of the standards of best practice and their relative importance could be enhanced by a targeted survey of international consultants who regularly review and advise on reforms to improve the structure, organisation and effectiveness of tax systems; and

- the validity of both the content and enforcement processes articulated as standards of best practice warrants detailed analysis in a range of individual jurisdictions representing the different families of law and stages of development.

The research in this thesis supports the contention that it is timely and would be beneficial to articulate a Model of taxpayers' rights as a guide to best practice in tax administration. The process of articulation provides a substantial body of analysis and recommendations. They can be used as a series of benchmarks for an important component of tax administration.