

TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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146 | How Tax Law is Made - Part 2

In this episode we will cover the judiciary and administrative side of our tax law system.

How Tax Law is Made – Part 2

In Part 1 we covered the first arm of government – legislative. In this episode Robyn Jacobson of [TaxBanter](#) will walk you through the judiciary (courts) and administrative side (ATO) of our tax system.

The following is a summary of what we learned but please listen to the episode itself since Robyn Jacobson explains all this much better than we ever could.

To listen while you drive, walk or work, just listen through a podcast app on your mobile phone.

Tax Dispute

It all starts with a dispute. At some stage there will be a taxpayer who makes a claim, does not declare income or interprets the law in a way the ATO doesn't agree with. This doesn't always mean that there is tax avoidance or evasion involved. It could be just about the interpretation of law. For simplicity let's assume that taxpayer is you.

Assessment

If the ATO disagree with your position, there will be discussions, possibly a review, but at some stage, the ATO will probably issue an assessment – if there hasn't been one before – or an amended assessment.

Objection

You can leave it at that and accept the assessment. Or you can object. The ATO will then get a different team to review your objection and come to a decision.

Appeal

When you receive the ATO's decision, you either accept it. Or you fight it. How you fight it depends on the point of contention.

AAT

If it is an issue of fact or law and you want a review of the ATO's decision, you appeal to the Administrative Appeals Tribunal (AAT). The AAT decides on questions of fact and law, allows self-representation and can exercise the Commissioner's discretion. And the rules of evidence don't apply at the AAT either, so you don't have to get everything witnessed, certified or translated – you do for some evidence but a lot less.

Federal Court

The Federal Court can only decide on questions of law. It doesn't allow self-representation so you need to get legal counsel. It can't exercise the Commissioner's discretion. And the rules of evidence apply.

So going to the Federal Court is more costly. Court fees apply. And if you lose, the cost will be awarded against you.

At the Federal Court, a single judge decides your case.

Full Federal Court

If you disagree with the decision of the Federal Court (single judge), you can appeal that decision to a Full Federal Court. The Full Federal Court has three judges.

The Full Federal Court might uphold or overturn the previous decision, either unanimously with all three judges agreeing or with a majority decision (2:1).

High Court

If you still don't agree with the Full Federal Court, you can apply for special leave to appeal up to the High Court. So you apply and then the High Court will decide whether they will hear your case or not. The High Court's decision is then final. At some stage either you or the ATO have to call it a day.

Assessors

Prior to 1992 the ATO had so-called assessors. So when you lodged a tax return, you would give them lots of papers, lots of receipts. And these ATO assessors would then work out your tax position.

Self-Assessment

Self-assessment started in 1992. So now you no longer have assessors working out a taxpayer's tax position. Now it is the taxpayer him or herself who does that. They lodge their tax returns. The ATO issues an assessment and then has two or four years to review this assessment.

Even today – almost 30 years after the introduction of self-assessment – many taxpayers are still unaware that a notice of assessment is not the end of the story. An assessment can always be reopened within 4 years ordinarily – two years for simple affairs. When you lodge and get a notice of assessment, the ATO still has the right to come back to it later.

Burden on Taxpayers

What self assessment did is shifting the burden back onto taxpayers. To support them the ATO provides enormous quantity of guidance. This guidance comes in many many different forms. Some rulings are binding on the ATO. Some are not.

And so this is how tax law is made in Australia. You have the legislative, judiciary and administrative arms of government.

MORE

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[Implementation of MLI](#)

[How Tax law is Made – Part 1](#)

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