



## Chapter 12

# Constitutional and Administrative Law Aspects of Tax

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### Introduction

Commonwealth taxation laws present an array of issues of interest to the public lawyer as well as to the avowed tax specialist. This range and complexity of issues is not surprising given the centrality of taxation to the business of government and the affairs of large corporations, and the complexity of the legislative scheme which results from that importance. The conflicting imperatives of maintaining the flow of revenue and providing proper opportunities for the review of decisions have resulted in rules for the review of assessments which have no real analogues in other areas of the law.

This essay focuses on that regime. It does so in three broad stages. First, the general constitutional context is mentioned by way of introduction, with some attention to particular aspects that resonate in the review and appeal mechanisms. Secondly, attention is given to the legal position of assessments of tax; in particular, the role of ss 175 and 177 of the *Income Tax Assessment Act 1936* (Cth) (the 1936 Act), which facilitate the recovery of the amount assessed and severely limit the scope for judicial review of the assessment under s 75(v) of the Constitution and its analogues. Thirdly, some aspects of the regime for review and appeals in Pt IVC of the *Taxation Administration Act 1953* are discussed.

### Constitutional aspects

#### *Introduction to Commonwealth legislative power*

Section 51(ii) of the Constitution confers power on the Commonwealth Parliament to make laws with respect to taxation; but so as not to discriminate between States or parts of States.

It is not within the scope of this essay to consider each of the multiple strands of authority dealing with the scope of the taxation power. Nevertheless, it is appropriate to make some observations as to the meaning of a tax for the purposes of s 51(ii), with a particular focus on constitutional issues that intersect with the administration of Commonwealth tax laws and their amenability to administrative and judicial review.



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