

## Tax File Number

*John Hyde*

To avoid a penal rate of withholding tax, most citizens will give their Tax File Number to their employers and bankers. For them, the Tax File Number will be an ID card minus the piece of plastic. The legislation will be supported by the Liberals and they are right to do so. For as long as the Government raises most of its revenue in income tax, some reliable means of identification is a necessary instrument of compliance.

Until we find the good sense to approximately halve government expenditure or seriously tax consumption, the existing alternatives to the positive identification are: a tax that some people will choose not to pay, or oppressive, high-handed Commonwealth tax-police. The activities of the latter have already been condemned by Mr D. M. Byrne of the Law Council of Australia. Both alternatives are more repugnant than the Tax File Number.

The objection to the Tax File Number is, however, not trivial. To maintain a civil society, some form of authority is essential, but one does not have to be an historian to know that governments habitually expand their activities beyond the essential and plunder the property, liberty and lives of ordinary people. People who do not guard against concentrated power often suffer from it.

Australians are substantially protected against misuse of government power by laws and traditions which limit the government's discretion. But those traditions sometimes break down. Two current examples of breakdown are the WA Inc. scandal and the Australian Taxation Office's (ATO's) attempts to collect taxes.

No doubt the Taxation Commissioner, Mr Boucher, will think it unjust to compare him with WA Inc. The ATO does not seem to have collected much tax from WA Inc. players but that is not at issue---I am sure it tried. ATO officers have not tried to protect favoured mates from taxation: just the opposite, they would say. But, while there is no suggestion, yet, of cronyism, and while they are guilty of zealotry rather than sleaze, they are making favourites by harassing only some taxpayers. Like the WA government, they have broken some of

the important traditions which protect people from governments and their agents.

Whereas the W A Government defied the tradition that public monies should not be used for private purposes, the ATO has to a significant degree abandoned an equally important tradition---the rule of law. Neither the WA nor the Commonwealth government has broken the law but both have defied traditions that are more fundamental than the laws.

In *The Law and the Constitution*, A. V. Dicey described the rule of law as, '...the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of government'.

The tax laws are now so complex that a reasonable man cannot expect to know his liability. He may acquaint the ATO with his actions as fully as memory and reasonable records will allow, but if his self-assessment should be ruled to be wrong, draconian penalties will be enforced. That he was frank in his disclosure does not save him.

Even more seriously, the Commissioner is using the threat of unknowable penalties to get taxes from individuals in a manner that is, in practice, arbitrary and unfair. The situation is made worse by the fact that the taxpayer can no longer even expect a prompt, substantive reply to correspondence from the ATO.

Tax officers have taken to raiding accountants and banks and sequestering private documents. Fairness, defined as exact payment of legal tax liabilities, is not the intention. If it were, the ATO would advise taxpayers who fail to claim all legitimate tax deductions.

The ATO's disregard for the rule of law is supplemented by McCarthyist attacks on the reputations of groups of people---barristers, solicitors, dentists, accountants and tradesmen---who are accused of barely-specified malfeasance. This will eventually backfire. Does the Commissioner believe that he can denigrate people in certain occupations without sooner or later being accused of choosing his targets by race or sex? As Federal MP, Alan Rocher, has pointed out, these days the tax law is as likely to be abused by the tax office as by the taxpayers.

This year, the ATO budgeted \$701 million for tax collection---17% more than last year. Yet, even so, it cannot gather all the tax that has been levied. Some of the money pays for a propaganda unit which, among other things, produced the slogan: 'Taxes---Building a better Australia'. The real danger here is not the waste nor is it that such banality could brainwash the public. It is that the slogans will brainwash bureaucrats until they no longer respect those traditions which distinguish Australia from totalitarian states.

Although the ATO has adopted techniques which I find objectionable, it, nonetheless, has my sympathy. Since the loss of Mr Keating's 'Option C', the government is insisting that the ATO do the impossible. Income tax will not yield as much as is asked of it without laws which we would not ordinarily contemplate. The Tax File Number's only virtue is that it will deliver more income tax in a manner that is less obnoxious than its alternatives.

The amendments which the Opposition insisted upon were needed. The only escape from the worst sorts of government is to disappear. Many political dissidents owe their lives to the incomplete records of their government and the fact that, at some critical time, they could earn enough to eat without revealing themselves to authority. Thus the right to earn without identifying oneself, even if it means paying 49% (or 39%) withholding tax plus the Medicare levy, could be important.

Those who think that my fears are grossly exaggerated should recall the liberal traditions ignored by the Weimar Republic in the 1920s and the rise of Nazism. I ask them to speculate how much more 'efficient' the Gestapo would have been had it had access to a computerised tax file number.

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