

LIMITING THE SCOPE FOR EXECUTIVE DISCRETION: RELEVANT CONSIDERATIONS IN EXERCISING THE DISCRETION TO NOT COLLECT TAX

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Under Australian income tax law, the Federal Commissioner of Taxation is charged with responsibility for assessing the tax liability of a taxpayer, and collection and recovery of the tax due and owing. However, there are also statutory provisions which authorise the Commissioner and the responsible Minister, or their delegates, to not collect tax in certain circumstances, in particular where the collection of the tax due and owing would cause serious financial hardship to the taxpayer. In these circumstances there is a discretion to waive rather than collect the tax debt.

Sources of power

The Australian Commissioner of Taxation has legislative responsibility for the general administration of the taxation system,¹ encompassing the responsibility for assessment of tax due and owing, and the collection of tax which has been validly assessed. Further, as Chief Executive of a Commonwealth agency, the Commissioner must manage the affairs of the Australian Taxation Office (ATO) in a way which promotes proper use of Commonwealth resources,² and pursue recovery of debts for which the Commissioner is responsible,³ which would include taxation debts.

However, there are a number of legislative provisions which also provide a statutory imprimatur for the Commissioner or relevant Minister to not collect tax which has been validly assessed and which is due and owing.

Arguably the most significant of these statutory exceptions to the requirement to collect tax is provided in the *Tax Administration Act 1953* (Cth) (TAA) s 340-5(3) Sch 1, which provides the Commissioner of Taxation with the power to release an individual taxpayer, or a trustee of a deceased estate, from the liability to meet a taxation debt if meeting the tax liability would cause hardship. Taxpayers must make application for release from a tax liability,⁴ with the release provisions applying to tax liabilities arising from income tax, fringe benefits tax (FBT), Medicare levy, pay as you go (PAYG) instalments, and additional taxes, penalties and interest charges associated with these taxes.⁵

The threshold test to attract the operative provision is establishing that serious hardship would result from the payment of a tax liability, and while this is a necessary condition to attract relief from the tax burden, alone it is not a sufficient condition, with the Commissioner then having to determine whether the hardship circumstances were such as to warrant the release of the taxpayer from the obligation to pay. If the Commissioner fails to provide relief from the taxation liability, taxpayers are able to object against that decision under the objection procedures in Part IVC of the TAA.⁶

Another statutory exception to collection vests the Finance Minister with a discretionary power to waive an amount owing to the Commonwealth,⁷ and as assessed tax is an amount due and owing to the Commonwealth, the Minister has power to waive the tax owing. Again, the onus is on the taxpayer to make application for waiver, and to establish why a waiver

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would be appropriate in the circumstances, with waiver being an appropriate remedy if seeking recovery of the debt would be seen as inequitable or would cause ongoing financial hardship.⁸ Again, financial hardship may be seen as a necessary but not sufficient condition for waiver, as the Minister must then exercise a discretion as to whether to waive the debt.

A further provision allowing non-collection of a tax debt vests in the Commissioner as Chief Executive for the purposes of the *Financial Management and Accountability Act 1997* (Cth) (FMAA), and imposes a responsibility to pursue recovery of debts for which the Commissioner is responsible,⁹ including taxation debts. However, the legislation also allows for circumstances when recovery of a debt need not be pursued, these circumstances include when the Chief Executive considers that it is not economic to pursue recovery of the debt.¹⁰

The Commissioner can determine that it would be uneconomical to pursue recovery of a tax debt where the taxpayer has no assets or funds, and little chance of improved financial circumstances.¹¹ While couched in different terms, this consideration is analogous to a claim of financial hardship, and in such circumstances the Commissioner is vested with further discretion to not pursue a taxation debt.

Establishing the serious hardship threshold

In each circumstance involving a power to not collect tax, the threshold condition is that collection of tax due would cause serious financial hardship. There is no legislative guidance as to establishing what constitutes serious financial hardship, and Hill J, in the case of *Powell v Evreniades*,¹² suggested that it would be inappropriate to attempt an abstract test:

It is inappropriate to endeavour in the abstract to state tests of what will and what will not constitute serious hardship ... Clearly there would be severe financial hardship if the dependants of a deceased person were left destitute without any means of support. That is not to say that in any particular case something less than that will not constitute serious hardship.¹³

*FCT v A Taxpayer*¹⁴ was a test case in which Stone J of the Federal Court considered the meaning that should attach to 'serious hardship.' Like the findings of Hill J, her Honour did not exclude the possibility that something less than destitution would constitute serious financial hardship.¹⁵

In judging financial hardship, the benchmark developed by courts and tribunals has been comparison with 'normal community standards', rather than the standard of living to which the taxpayer may have been accustomed. The AAT in *Re Ferguson and Ferguson v Commissioner of Taxation* looked to whether there was established '...hardship of a significant kind in terms of normal community standards.'¹⁶ In a similar finding, Stone J, in *FCT v A Taxpayer*, noted that '(i)mplicitly, the Tribunal was assessing the respondent's individual circumstances by reference to normal community standards.'¹⁷

The ATO has provided further guidance on the determination of serious hardship in the *Law Administration Practice Statements*, with PS LA 2011/17 indicating that the concept of serious hardship suggests unduly burdensome consequences following payment of a tax debt, such that the person would be deprived of necessities according to normal community standards. This would be evidenced by the taxpayer being left without means to achieve reasonable acquisition of food, clothing, medical supplies, accommodation, education and other basic requirements,¹⁸ rather than merely suffering a limitation of social activities or entertainment, or loss of access to goods and services of a more luxurious nature or standard.

In a similar vein, *Finance Circular 2009/09* suggests that financial hardship would be established when there are strong reasons for the view that a person's financial

circumstances would not improve to the point where the debt could be paid '... without suffering a reduction in living standards that is unacceptable by community standards.'¹⁹ It is suggested, further defining financial hardship, that financial hardship exists if payment of the debt would result in '... the applicant being left without the means to achieve reasonable acquisition of food, clothing, medical supplies, accommodation, education and other basic needs.'²⁰

In addition the determination of serious hardship, as judged against normal community standards, should be an objective determination which does not involve the exercise of a discretion by the decision maker. While there may be a range of factors to consider in determining whether severe hardship has been established, the broad test that has emerged is whether payment of the liability would reduce the taxpayer to a standard below normal community expectations, where necessities of life would not be able to be met. It is suggested that, while there may be some variability in this test, in the sense that the test may not be susceptible to reduction to a dollar value, it is sufficiently certain to allow the decision as to whether hardship exists to be made on the basis of a quantifiable objective evaluation.

The evidence from the cases suggests that the courts view the determination of serious hardship as an objective determination. In the decision in *COT v Milne*,²¹ Conti J referred to the then current ATO Tax Ruling IT2440²² dealing with relief for serious hardship, noting that the ruling referred to the notion of '... without serious detriment to living standards' which notion his Honour found to be '... objective in nature.'²³

However, while it is suggested that determination of financial hardship should be an objective determination, where a degree of discretion lies with the decision-maker is in the decision whether to provide relief to the affected taxpayer, when hardship has been established.

The discretion to not collect tax

The issue of establishing serious hardship is a threshold condition to the exercise of an executive decision as to whether to waive or not collect a tax debt.

The first question is whether the provisions granting the power to not collect tax do, in fact, grant a discretion. This issue of construction was addressed by Hill J in *Powell*, in particular whether the word 'may' in the statute should be seen as providing a discretion, or whether, once severe hardship had been established, the statutory meaning should be 'shall', thus requiring remission of the tax debt in whole or in part. From a review of the authorities, his Honour formed the view that 'may' provided a choice at the discretion of the decision maker. His Honour noted, in particular, the finding of Dixon J in *R v Trebilco: Ex parte Falkiner & Sons*,²⁴ that:

... if a taxpayer does satisfy one of the conditions precedent so laid down, he does not obtain a right to relief ... he obtains only a title to the consideration by the board of the general circumstances of his case and to a determination whether it is just and proper that he should receive ... relief ... The degree of relief is left to the board in express terms. A power given by the word 'may' in such a provision must ... be understood as discretionary.²⁵

On this basis, Hill J was prepared to conclude that, in these circumstances, '... the word "may" encompasses the discretion of the commissioner.'²⁵

Having established the power as discretionary, Hill J found that the correct interpretation of the forerunner provision to TAA s 340-5 Sch 1 was that the power involved two steps, first to identify whether payment of the tax liability would cause severe hardship and, if so, to then determine whether or not to grant full or partial release from the taxation debt.²⁶ Significantly,

Hill J noted that '... the factors that may be relevant to the second of these steps could be a great deal wider than the factors which are relevant to the first of the steps.'²⁷

That such an approach is still applicable under the terms of TAA s 340-5 Sch 1 was made clear by Stone J in *FCT v A Taxpayer*.

The Tribunal's conclusion as to serious hardship does not conclude the matter. The decision to release the respondent from his tax obligations is clearly discretionary. ... The Tribunal was aware that it had discretion to grant or withhold relief even if it was satisfied on the serious hardship point. If a taxpayer has been able to establish that payment of the tax liability would create a circumstance of serious hardship, the second step identified is for the Commissioner to exercise the legislative discretion in determining whether or not to release the taxpayer from the tax liability.²⁸

Scope of executive discretion

In relation to the wording of the hardship provision in the TAA, the statute provides that the 'Commissioner may release' the tax liability.²⁹ The *Financial Management and Accountability Act 1997* (Cth) provides that the Finance Minister 'may waive' the right to payment,³⁰ or that a Chief Executive Officer need not pursue a debt if it is 'considered' to be non-economical.³¹

The wording used in these provisions initially appears to provide the executive with a wide and unfettered power, without legislative limitation on the exercise of that power. There is no guidance in the statutes as to the exercise of the discretion, other than the general overriding rule that the power must be exercised for the purposes of the Act, and no guidance, by way of prescription or preclusion, as to the range of matters which may be considered by the decision maker in the exercise of the discretion.

However, while the discretions may initially appear to be large, the courts have shown a willingness to impose some broadly stated limits on what may otherwise appear an unfettered power, suggesting that discretions cannot be exercised for purposes for which they were not conferred, examples being for private purposes or gain, or irrationally. The approach followed in Australia has its roots in the words of Lord Halsbury LC, who said a discretionary power meant:

[T]hat something is to be done according to the rules of reason and justice, not according to private opinion ... according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office, ought to confine himself.³²

In the Australian context, Windeyer J in *Giris Pty Ltd v FCT*³³ had spoken of the need, when exercising a discretion, '... to be guided and controlled by the policy and purpose of the enactment, so far as that is manifest in it [and to] exclude from ... consideration any matter which it would be unlawful ... to take as a criterion.'³⁴ In *Kruger v Commonwealth*,³⁵ Brennan CJ suggested that when '... a discretionary power is statutorily conferred on a repository, the power must be exercised reasonably, for the legislature is taken to intend that the discretion be so exercised.'³⁶

The legislative grant of an executive discretion may imply limitations on the factors to be considered. Mason J in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*,³⁷ found the discretion in that case to be '... similarly unconfined, except in so far as there may be found in the subject matter, scope and purpose of the statute some implied limitation on the factors to which the decision-maker may legitimately have regard.'³⁸ Further, and more recently, in *Hot Holdings v Creasy*,³⁹ Brennan CJ, Gaudron and Gummow JJ explained that 'The courts do not readily classify as absolute or unfettered a statutory discretion the exercise of which will affect the rights of the citizen ...'.⁴⁰

Even in situations where the discretionary power is based on the 'opinion' of the decision maker, or the decision maker 'considers' a state of affairs is satisfied, there is an implication that the decision maker should act rationally and fairly, and not for personal or other

improper motives. French J (as he then was) has clarified use of the term 'absolute discretion' in legislation as follows: 'There is, of course, no such thing as an absolute discretion in the literal sense.'⁴¹ In a similar vein, Kirby J in *Gerlach v Clifton Bricks Pty Ltd*⁴² had opined that:

All repositories of public power in Australia, certainly those exercising such power under laws made by an Australian legislature, are confined in the performance of their functions to achieving the objects for which they have been afforded such power.⁴³

Further, it has been suggested, on the basis of the reasoning in *Plaintiff S157/2002 v Commonwealth*,⁴⁴ that the High Court may view extremely broad executive powers as unlawful, on the basis that the grant of power was too broad.⁴⁵

Given that courts will now not accept that a statutory discretion that does not carry statutory limitation is an absolute unfettered discretion, the issue remains as to the nature of matters which may be considered in exercising the discretion to waive or not to collect a tax debt.

Considerations in the tax dispensing discretion

In examining which matters may be considered in relation to the operation of discretionary taxation dispensing powers, courts and tribunals traditionally have adopted a broad approach.

At issue in *Giris v FCT* was the power of the Commissioner to not apply a penalty rate of tax if the Commissioner considered it unreasonable to do so. Menzies J suggested a wide scope for the discretion, as the legislature had left '... as a problem for the Commissioner to decide, retrospectively and in the light of what has happened, whether the particular provision should not apply to a particular trust estate in respect of a year that has passed.'⁴⁶ Forming an opinion 'in the light of what has happened,' provides a wide scope for matters that may be considered.

The scope of factors that are relevant to the discretion to not collect tax was addressed by Hill J in *Powell*, where his Honour took the view that the factors considered in exercising the discretion to release the debt would be at large, and '... could be a great deal wider than the factors which are relevant in determining the first of the steps [serious hardship].'⁴⁷ His Honour explained that:

... in the course of consideration of the release of tax the Board may consider not only such matters as go to the issue of serious hardship but also other matters which in the discretion of the Board may be relevant, those other matters being merely proscribed by the general principle that the discretion must be exercised bona fide and for the purposes for which it was conferred ...⁴⁸

In addition to requiring that the discretion be exercised bona fide and for the purposes of the Act, Hill J noted a requirement for fairness, since 'Even where the discretion conferred upon the decision maker is a very wide one the requirements of fair play are not necessarily ousted.'⁴⁹ Similarly, in *Milne* Conti J acknowledged that the factor of fairness to other taxpayers was relevant to the Tribunal's approach to decision making.⁵⁰

In a different taxation context,⁵¹ French J had suggested in *FCT v Swift*⁵² that the exercise of a discretionary power to dispense with tax collection would involve consideration of the widest range of factors:

Instead of endeavouring to spell out the circumstances in which burdens imposed by the legislation might be lifted, the Parliament has provided for a dispensation that is capable of exercise by reference to the widest range of factors. In this context, the scope and purpose of the Act can be seen as the collection of company tax subject to a dispensing power. The dispensing power is incidental and ancillary to the primary object of the legislation.⁵³

In *A Taxpayer*, the AAT had made comments in relation to public interest considerations, and while Stone J agreed that public interest was an irrelevant consideration in determining serious hardship, there was no suggestion that public interest would not be a relevant matter in the exercise of the discretion by the decision maker.⁶⁴

Limiting the dispensing discretion

However, as with the trend noted earlier for courts to find that a wide discretionary power is not at large, there has been evidence in more recent tax dispensing cases of courts and tribunals seeking to limit the scope of the discretion, by delineating those matters which may be considered. In *Re Wilson v Minister for Territories*,⁶⁵ Deputy President Hall noted that relevant considerations will vary between cases, but suggested that:

... relevant considerations are likely to include the circumstances out of which the hardship arose; whether those circumstances were within the capacity of the applicant to have foreseen and controlled; whether the applicant has over-committed himself financially; whether the applicant or any of his dependants has suffered serious illness or accident involving irrevocable financial loss to the applicant; whether the applicant has been in regular employment; whether the circumstances of the hardship are likely to be of a temporary or recurring nature; and whether a decision to remit the rates would, as a matter of administrative justice and fairness be appropriate ...⁶⁶

A matter raised in this passage and in a number of other decisions is the significance to be attached to the degree of culpability which attaches to the taxpayer in contributing to the 'severe hardship' in which they find themselves, and which prevents them from meeting their tax liability. Wilcox J, in *Corlette v Mackenzie & Ors*,⁶⁷ had noted that 'It would be extremely odd if a taxpayer who was the author of his or her misfortunes, through imprudent or extravagant expenditure, was entitled, as a matter of right, to a release of unpaid income tax.'⁶⁸

In *Milne*, Conti J noted that the Tribunal found that the taxpayer's business catastrophes, fraud by a former partner and ill health all provided evidence of eventualities which the taxpayer had been unable to control, with Conti J seeing these as material issues as they established the lack of moral wrongdoing by the taxpayer in relation to his financial misfortune.⁶⁹ Conti J was persuaded that these factors, along with the fact that the taxpayer had taken steps to reduce his expenditure, were relevant considerations which the Tribunal could consider in providing relief from the tax debt.⁶⁰

The significance of taxpayer culpability was again highlighted by Deputy President Block in *Rollason v FCT*⁶¹ when noting that in *A Taxpayer* and *Milne*, in both of which relief had been granted, the taxpayers were able to establish both serious hardship, and the fact that the hardship had arisen from misfortune for which they were not responsible.⁶² By contrast, in denying relief in *Rollason* the AAT found that while there was hardship, '... it is equally clear that (the taxpayer) is responsible for the fact that he finds himself in this position.'⁶³ Matters considered by the AAT included that the taxpayer had disposed of income without making provision for tax liabilities, that while there had been payment to an unidentified creditor, there had been no payment to the Commissioner, and that the taxpayer had what was described as an appalling compliance history.

In granting relief in the decision in *Swift*, French J had noted that factors should not be dealt with piecemeal, but must be taken together, as '... reference to personal factors cannot be disentangled from the consideration of their objectives in entering the transaction that they did, and the nature of their participation in it.'⁶⁴ His Honour found it appropriate to take into account the fact that the applicants were not privy to any fraud, and had done nothing to bring about the situation whereby the tax liability could not be met.⁶⁵

Taxpayer behaviour which may contribute to the hardship condition is one matter listed in PS LA 2011/17 as a factor to consider in the exercise of the discretion. The ruling recognises

that, in exercising the discretion, the decision-maker '... is obliged to act reasonably and responsibly, and should not act arbitrarily or capriciously.'⁶⁶ Examples of factors which may result in the exercise of the discretion to grant relief against a taxpayer suffering hardship are:

- whether the taxpayer had disposed of funds without making provision for tax liabilities;
- whether granting relief would not reduce hardship, such as where there was a prospect of bankruptcy, and relief would only serve to advantage other creditors;
- whether the taxpayer had failed to pursue debts; and
- whether the hardship was associated with a single event or short term outcome.

It is argued here that, in exercising the dispensing discretion, relevant considerations should impliedly be limited to those elements surrounding the circumstances under which the serious hardship has arisen, in accord with the scope and purpose of the relevant legislation. Matters of particular relevance are the degree of taxpayer culpability in generating the circumstances, or taxpayer attempts to ameliorate the circumstances whereby the hardship has arisen, and the extent to which those circumstances were under the control of the taxpayer suffering the hardship.

This view broadly corresponds with the findings in *Re Wilson* noted earlier. It is suggested that, in the normal course of events, factors outside the circumstances surrounding the creation of the hardship, and the degree of control by, and culpability of, the taxpayer in relation to those circumstances, should not generally be relevant to the decision as to whether to provide relief.

It is suggested that this view is in accord with the statutory purpose and scope of the statutory scheme, as shown in the interpretation of dispensing provisions by French J in *Swift*. The legislative scheme in the *TAA* and *FMAA* legislation can be seen as providing a dispensation power, which is incidental and ancillary to the major purpose of tax collection, in those circumstances where a threshold requirement of severe financial hardship has been established.

Having established severe hardship, the purpose of the legislation is that a dispensing power be available, although not mandatory. There may be an undermining of this legislative intent to provide dispensation in hardship cases if the decision-maker has a broad and unfettered discretion as to whether to grant the relief envisaged by the legislation, and the grant of relief was denied in circumstances where there was compelling evidence that the taxpayer had not contributed to the hardship circumstances, and contributing factors were outside the taxpayer's control. As an example, if hardship was established but relief denied on the basis of a perceived community demand for a 'tough stance' by the ATO, this may be seen as contrary to the legislative intent of providing a dispensation in such circumstances.

Limiting relevant considerations in the exercise of the discretion to the factors enunciated would not compromise the requirement for fairness and public interest raised by the courts, as outlined earlier.

If the notion of fairness applies in terms of procedural fairness, this should be afforded to taxpayers in exercising the discretion. However, if fairness is used in relation to the outcome of the decision, rather than the process of decision making, the notion provides little assistance unless seen in the context of the surrounding circumstances, as there can be no objective standard. An outcome of relief being granted from the tax debt may be seen as 'fair' by the taxpayer receiving the relief, but may not be seen as 'fair' by other taxpayers who have difficulty meeting tax obligations but have not been granted relief. The concept of fairness, therefore, cannot be seen as an independent relevant consideration in exercising

the discretion, but should be seen in the context of the surrounding circumstances; it is too amorphous a concept to be considered at large and without context.

It is argued that the context within which fairness may be judged is best provided by those circumstances under which the hardship arose, and the culpability and control of the taxpayer in generating or ameliorating those circumstances. If, the relevant considerations are limited to these circumstances, 'fairness' of the outcome, in a broad sense, would be seen to be best achieved, as the fairness is based on objective matters rather than a nebulous concept.

A similar argument may be made in relation to the public interest criterion. On a wide interpretation, public interest considerations in exercising the discretion could be seen to include such matters as enhancement of the reputation of the ATO, or community goodwill and improved compliance if relief was granted. However, it is suggested that this would only operate in the most general sense and that the public interest needs to be judged on the basis of the context of the hardship circumstances.

Again, it is argued that this context is provided by the circumstances that led to hardship, and the taxpayer's role in those circumstances. As an example, it may be argued that providing relief to a taxpayer may be seen as creating an environment which would encourage future compliance by that taxpayer, and thus be in the public interest. However, if relief was provided to a taxpayer who was seen as undeserving, with the taxpayer being the architect of their own downfall and the resultant hardship, this may compromise future compliance by other taxpayers, and could hardly be seen as being in the greater public interest.

Public interest cannot be a stand-alone consideration in exercising the discretion, which suggests that the relevant considerations in exercising the discretion should be limited to the circumstances surrounding the creation of the taxpayer's hardship, and the taxpayer's role in those circumstances.

Conclusion

While the discretionary power appears to be at large, in exercising the power to grant discretionary relief the relevant factors should not be at large or unfettered but should be limited in all but exceptional cases to the circumstances whereby the hardship arose and the extent to which those circumstances were under the control of the taxpayer suffering the hardship. The limitation of relevant considerations is in accord with the statutory intent that relief be granted in appropriate cases; this test best serves to identify appropriate cases.

By limiting the relevant considerations to the circumstances surrounding the hardship, including the taxpayer's role in generating or ameliorating the hardship, and whether circumstances were outside the control of the taxpayer, the broad factors of fairness and public interest can also be satisfied, as these matters should be seen in the context of the circumstances of a particular case.

Endnotes

- 1 See, eg, *Income Tax Assessment Act 1936* (Cth) (ITAA 1936) s 8; *Income Tax Assessment Act 1997* (Cth) (ITAA 1997) s 1-7; *Tax Administration Act 1953* (Cth) (TAA) s 3A.
- 2 *Financial Management and Accountability Act 1997* (Cth) (FMAA) s 44.
- 3 FMAA s 47; note that there are specific exceptions.
- 4 TAA s 340-5(1) Sch 1.
- 5 TAA s 340-10(1)&(2) Sch 1.
- 6 TAA s 340-5(7) Sch 1.
- 7 FMAA s 34.
- 8 *Finance Circular 2009/09*, Attachment C [19].
- 9 FMAA s 47.
- 10 FMAA s 47(1).

- 11 PS LA 2011/17 [69-70].
- 12 [1989] FCA 114.
- 13 Ibid [20-21].
- 14 [2006] FCA 888.
- 15 Ibid [17].
- 16 [2004] AATA 779, 35.
- 17 *A Taxpayer* [55].
- 18 PS LA 2011/17 [37-38].
- 19 *Finance Circular 2009/09*, Attachment C [19].
- 20 Ibid [25].
- 21 [2006] FCA 1005.
- 22 Since withdrawn and incorporated in PS LA 2011/17.
- 23 *Milne* [15].
- 24 (1936) 56 CLR 20.
- 25 Ibid 31-2.
- 25 *Powell* [32].
- 26 Ibid [40].
- 27 Ibid.
- 28 *A Taxpayer* [58-9].
- 29 TAA s 340-5(3). The Commissioner may release you, in whole or in part, from the liability ...
- 30 FMAA s34. Finance Minister may waive debts etc.
(1) The Finance Minister may, on behalf of the Commonwealth:
(a) waive the Commonwealth's right to payment of an amount owing to the Commonwealth ...
- 31 FMAA s 47. Recovery of debts
(1) A Chief Executive must pursue recovery of each debt for which the Chief Executive is responsible unless:
...
(c) the Chief Executive considers that it is not economical to pursue recovery of the debt.
- 32 [1891] AC 173 at 179, quoted in M Aronson, B Dyer & M Groves, *Judicial Review of Administrative Action* (Thomson Reuters, 4th ed, 2009) [3.35].
- 33 (1969) 119 CLR 365.
- 34 Ibid 384 quoted in *Powell* [36].
- 35 (1997) 190 CLR 1.
- 36 Ibid [36].
- 37 (1986) 162 CLR 24.
- 38 Ibid [40].
- 39 (1996) 185 CLR 149.
- 40 Ibid 171.
- 41 *Goldie v Commonwealth* [2002] FCA 261 [45].
- 42 (2002) 209 CLR 478.
- 43 Ibid 503-4.
- 44 (2003) 211 CLR 476.
- 45 See, eg M Aronson, B Dyer & M Groves, *Judicial Review of Administrative Action* (Thomson Reuters, 4th ed, 2009) [17.65].
- 46 *Giris* 381.
- 47 *Powell* [48-9].
- 48 Ibid [36].
- 49 Ibid [54].
- 50 *Milne* [22].
- 51 Concerning the discretionary powers in the *Taxation (Unpaid Company Tax) Assessment Act 1982* (Cth).
- 52 (1989) 89 ATC 5101.
- 53 Ibid 5116.
- 54 *A Taxpayer* [50].
- 55 (1985) 7 ALD 225.
- 56 Ibid [24].
- 57 (1996) 62 FCR 597.
- 58 Ibid 598.
- 59 *Milne* [19].
- 60 Ibid [57].
- 61 [2006] AATA 962.
- 62 Ibid [44].
- 63 Ibid [50].
- 64 *Swift* 5117.
- 65 Ibid.
- 66 PS LA 2011/17 [51].