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Abstract

The trend of imposing levies in Australia because they are a 'soft charge' rather than a 'hard tax' is growing. The definition of a levy remains unclear to many Australians. The 2013 announcement by the federal government to increase the existing Medicare Levy to fund the National Disability Insurance Scheme ('NDIS') invites comment on whether a difference exists between a tax and a levy.

Keywords

tax, levy, definition, difference, Australia

OPINION & COMMENTARY

IS IT A LEVY, OR IS IT A TAX, OR BOTH?

MADELINE TAYLOR*

The trend of imposing levies in Australia because they are a 'soft charge' rather than a 'hard tax' is growing. The definition of a levy remains unclear to many Australians. The 2013 announcement by the federal government to increase the existing Medicare Levy to fund the National Disability Insurance Scheme ('NDIS') invites comment on whether a difference exists between a tax and a levy.

INTRODUCTION

Since time began, societies have been taxing their citizens. The tax declaration of Ancient Egypt 196 BC on the Rosetta Stone was discovered by Napoleon in 1799 and led to the first modern interpretation of hieroglyphics as a written language. The Rosetta Stone is a decree passed by a council of Egyptian priests inscribed in Hieroglyphic, Demotic and Greek. Part of the decree states the reigning King Ptolemy V granted a tax exemption 'concerning the priests that they should not pay their tax on becoming priests above what they used to pay up to Year 1 under his father.'¹ The inscriptions also revealed that Pharaohs imposed various taxes, including a 20% agricultural tax for Egyptian citizens.²

Napoleon taxed boldly, being so fond of battle and conquest. Sabine reported with no sadness that, when the Napoleonic Wars ended in 1816 and the first income tax was repealed, the tax commissioner's documents were ordered to be 'cut into small pieces and conveyed to a paper manufactory, so

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¹ British Museum, *The Rosetta Stone: Translation of the demotic text* (2013) <http://www.britishmuseum.org/explore/highlights/articles/r/the_rosetta_stone_translation.aspx>.

² David F Burg, *A World History of Tax Rebellions* (Taylor & Francis, 2004) 200.

that no trace of the hated tax would remain'.³ But that tax came back, with vengeance.

Ancient Greeks were heavily taxed, in wartime, in particular. In Ancient Rome, Julius Caesar imposed the first sales tax in history at 1% rate.⁴ Nero sparked a rebellion due to his excessive taxation policies to fund the costs of reconstructing Rome after the fire of AD 64 and to rebuild his infamous 'golden house'.⁵ Caligula introduced taxation on prostitution to open a brothel within the imperial palace.⁶ He also brought down a tax on prostitutes (*vectigal ex capturus*): 'he levied new and hitherto unheard of taxes; a proportion of the fees of prostitutes; so much as each earned with one man. A clause was also added to the law directing that women who had practiced prostitutery and men who had practiced procuration should be rated publicly; and furthermore, that marriages should be liable to the rate'.⁷

While Franklin Roosevelt was righteous, as politicians can be – 'Taxes, after all, are the dues that we pay for the privileges of membership in an organised society' - the dominant perception of taxation throughout history is 'as an abused or abusive means towards noble or ignoble ends, never quite able to escape its association with extortion'.⁸

Australia has a tax take of 31.6% as a proportion of the GDP. Compared to the OECD-30 unweighted average of 36.3%, Australia has a low tax burden.⁹ Australia is ranked 27th in the world with an average tax rate of 26.7% on personal income. In comparison, Belgium has the highest average personal income tax rate in the world of 55.5%. However, the Australian company tax

³ Sabine, *A History of Income Tax* (1966) 46.

⁴ New Internationalist, *A Short History of Taxation* (October 2008) ProQuest <<http://search.proquest.com.ezproxy.bond.edu.au/docview/200043855>>.

⁵ Ibid.

⁶ David F Burg, *A World History of Tax Rebellions* (Taylor & Francis, 2004) 350.

⁷ Suetonius, *Calig* Xi.

⁸ New Internationalist, *A Short History of Taxation* (October 2008) ProQuest <<http://search.proquest.com.ezproxy.bond.edu.au/docview/200043855>>. Henny Youngman : 'The income tax people are very nice. They're letting me keep my own mother'.

⁹ See Appendix 1.

burden ranks the third highest at 5.3% of the GDP, compared to the OECD-20 average of 3.4%.

In addition to direct taxes, Australian taxpayers have been subject to an increasing number and variety of levies since the Howard Government's time in office.¹⁰ Commentator David Penberthy complains: 'Australians pay more indirect taxes and sneaky fees, levies and charges than in most advanced nations'.¹¹ The device or trend of imposing levies in Australia as a 'soft charge' rather than a 'hard tax' is growing. The recent announcement by the federal government to increase the existing Medicare Levy in order to fund the National Disability Insurance Scheme ('NDIS') invites commentary on whether a difference exists between a tax and a levy.

WHAT IS A LEVY?

A levy is a temporary tax collected by federal, state or local governments and used for a stated public purpose. A taxpayer can be liable for various levies' depending on their annual taxable income. In comparison, a tax is usually a general contribution imposed on individuals, properties or businesses collected into the government's consolidated fund and allocated according to government budgets.¹²

Two classes of levies exist in Australian tax law. The most common levy is imposed upon certain taxpayers for the government to temporarily raise revenue to fund a public or social purpose.¹³ The second type of levy is charged by the Levies Revenue Service on producers, distributors and growers of Australian produce, based on the percentage of output or import of goods taxed. This second type of levy is typically imposed on agricultural products, usually based on the quantity of a commodity, to make certain

¹⁰ The Howard Government imposed levies such as The Gun Buyback Levy (2003), Defence East-Timor Levy (2000), Domestic Sugar Levy (2003) and the Ansett Ticket Levy (2001).

¹¹ David Penberthy, 'A Politically Heavy Levy' (23 January 2011) *Adelaide Now* <<http://www.adelaidenow.com.au/ipad/penberthy-a-politically-heavy-levy/story-fn6bqphm-1225992886223>>.

¹² Paul Kenny, *Australian Tax 2013* (Lexis Nexis Butterworths, 2013) 40.

¹³ Nygh and Butt (eds), *Butterworths Concise Australian Legal Dictionary* (LexisNexis Butterworths, 3rd ed, 2004) 55.

products more competitive, and fund research and development or other activities of an agricultural industry body.

According to Corkery, Gerrard and Lockie, the Levies Revenue Service collects over 60 levies and charges from Australian taxpayers and businesses including:¹⁴

Dairy Adjustment levy Dairy (All Milk Levy)	11 cents per litre was charged on consumers of products marketed as dairy products to assist Australian dairy farmers. Dairy Levies were wound up in 2000.
Fire Levies	Fire and Rescue services in certain states are recipients of Fire Levies collected by Local Government rates.
Temporary Flood and Reconstruction Levy	The Flood Levy was imposed on income earners over \$50,000 per annum to rebuild infrastructure in flood-affected regions during the 2011/2012 financial year.
Defence East Timor Levy	In 2000, the Howard government introduced the Defence East Timor Levy to pay the costs of the East Timorese humanitarian intervention. Half a per cent of income was deducted from high income taxpayers (\$50,000 to \$100,000 per annum) and 1% deducted for those exceeding more than \$100,000 per annum. This levy was wound up in 2001.
Grain Levies	Seven grain commodities are charged a levy or export fee. For example, the Wheat Levy is charged at 1.02% of the farm gate value of wheat. ¹⁵
Horticulture Levies	20 horticulture commodities are charged a levy or export fee. For example, shelled almonds are charged a levy of \$0.01 per kg.
Livestock Levies	11 livestock commodities are charged a levy or export fee. For example, beef exportation is charged a levy at 0.6 of a cent per kilogram.
Medicare Levy	Most Australian taxpayers are liable for the Medicare Levy of 0.5%. However, seniors, pensioners and low-income families can be fully or partially exempt from the Medicare Levy.

¹⁴ Jim Corkery, Anthea Gerrard and Damien Lockie, 'Because Parliament can' (2008) 18 *Revenue Law Journal* 3.

¹⁵ Department of Agriculture, Forestry and Fisheries, 'Levies' (2013) *Australian Government* <<http://www.daff.gov.au/agriculture-food/levies>>.

Medicare Levy Surchage	If higher income earners (over \$80,000) do not have private hospital cover, they are required to pay a 1.5% additional Medicare Levy Surchage.
Wine Export Charge, Wine Grapes Levy and Grape Research Levy	Levies are charged to provide funding for marketing, R & D and plant health programs for the wine/grapes industry. For example, the Wine Export Charge is 0.20% of value from wine exported worth up to \$20 million and 0.05% for wine exported worth \$70 million and over. ¹⁶
The Financial Industry Levy ¹⁷	The Financial Industry Levy is imposed by the Australian Prudential Regulation Authority to fund the supervision of the financial industry including ATO, ASIC, SuperStream and DHS. The amount of the Financial Industry Levy is determined by the Minister for Revenue and the Assistant Treasurer after industry consultation annually. The total Financial Industry Levy required in 2012-2013 to fund the relevant Commonwealth agencies and departments is \$266.4 million. ¹⁸ For example, the ADI industry (banks, building societies, credit unions and SCCIs) are required to contribute \$46.9 million of APRA's funding requirements representing a 34.7% levy paid by the ADI industry. ¹⁹

¹⁶ Department of Agriculture, Forestry and Fisheries, 'Wine Grape Levies' (2013) *Australian Government* <http://www.daff.gov.au/agriculture-food/levies/winegrapes/wine_grapes_levy/rates>.

¹⁷ In 2012, France introduced a Financial Transactions Tax, 'The Tobin tax', on financial transactions. The 0.2% tax applies to high frequency financial trading and naked short sales of sovereign credit-default swaps. Although high-frequency trading is not as prevalent in Australia as it is in the US and Europe, a financial transaction tax may be imposed in the future by the Australian Prudential Regulation Authority to curtail the destabilising influence of high speed trades. For more information see: JF Corkery and Kristen Zornada, 'High-frequency trading and a financial transactions tax' (2012) 22 *Revenue Law Journal* <<http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1224&context=rj>>.

¹⁸ The Treasury, *Financial Industry Levies 2012-2013* (2012) The Treasury <<http://www.apra.gov.au/CrossIndustry/Documents/Financial-Industry-Levies-FY12-13-Updated-signed-determination.pdf>>.

¹⁹ Ibid.

TAXES AND LEVIES THROUGHOUT HISTORY

The imposition of taxes has historically been viewed with discontent and even hostility. The negative reputation of tax collectors is evident in the Biblical Gospels; 'but the tax collector stood at a distance. He would not even look up to heaven, but beat his breast and said, 'God, have mercy on me, a sinner'.²⁰ Apostle and evangelist Matthew was a former tax collector and cites in his gospel Caesar Augustus' reforms which included a 5% inheritance tax, a 1% sales tax at auctions and a 4% tax on the value of slaves sold in the Roman Empire.²¹ During Diocletian's reign in Rome we saw the first graduated taxes; the higher a citizen's income, the higher their tax rates. This system led to a liability of up to 100% tax or more at the top rate for rich Roman citizens.²² Commentators have argued Diocletian's tax system led to a decline in wealth, personal freedoms and even the eventual downfall of the Roman Empire.²³

In contrast to taxes, 'levies' were first imposed in 1377 as indirect taxes charged on import and export customs duties to raise revenue in emergencies.²⁴ Levies were subject to Parliamentary approval. They were originally imposed to cover the expenses of operating the British navy to protect against piracy.

Australia's first taxes (duties on wine, spirits and beer) were imposed by Governor Phillip in 1788 to raise revenue for the completion of Sydney's first gaol and provide for the orphans of the colony.²⁵ In 1815 Judge Bent, the first Australian Supreme Court Judge, refused to pay the fee to Governor Macquarie at the first toll gate in Sydney. Judge Bent pointed out that,

²⁰ Luke 18:13.

²¹ Rob Normey, 'A Brief History of Taxation' (2001) 25 *Law Now* 12.

²² *Ibid* 9.

²³ Edward Gibbon, *Edward Gibbon's History of the Decline and Fall of the Roman Empire* (2001) MMISI < http://www.mmisi.org/pr/16_01/coll.pdf>.

²⁴ Rob Normey, 'A Brief History of Taxation' (2001) 25 *Law Now* 12.

²⁵ The Treasury, *A Brief History of Australia's Tax System* (2013) The Treasury < http://archive.treasury.gov.au/documents/1156/HTML/docshell.asp?URL=01_Brief_History.asp>.

because of the doctrine of separation of powers, the Executive could not legally charge a member of the Judiciary.²⁶

BIZARRE TAXES

According to Albert Einstein, 'the hardest thing in the world to understand is the income tax'.²⁷ Government authorities have historically taxed income, commodities, goods, services and a range of other items as long as the item holds 'value'. Tsar Peter of Russia (1672-1725) reputedly created the most taxes in history, including taxes on: boots, beehives, candles, nuts, hats, horses, chimneys, water and even souls. In an effort to westernise the Russian nobility, Tsar Peter imposed a tax of 100 roubles on all men, except peasants and clergymen, who did not shave their beards.

One of the first taxes recorded was the Egyptian tax on cooking oil. Eager tax collectors audited households to check appropriate amounts of fresh cooking oil were being used and not being recycled for cooking. The Vikings demanded taxes from countries in return for their freedom. They extorted six tons of silver in return for not invading Paris. Nero imposed a urine tax on peasants who urinated into public toilets. Nero profited from the urine, which was used by tanners and laundries to bleach togas.²⁸ A tax on hair powder for wigs in the UK commenced in 1795. The tax of one guinea annually (equivalent of £30) per wig was not repealed until 1869.

A window tax in UK was imposed between 1696 and 1851 based on the assumption that the more windows a house had the more tax the occupants could pay. The window tax was levied at a rate of two shillings for houses with less than ten windows, six shillings for ten to 20 windows and ten shillings for more than 20 windows.²⁹ The remnants of the window tax can be

²⁶ CH Currey, *Bent, Jeffery Hart* (2008) ANU < <http://adb.anu.edu.au/biography/bent-jeffery-hart-2228>>.

²⁷ James Poutler, *Beards, breasts and bricks: 20 of the world's weirdest taxes* (20 May 2013) City Wire < <http://citywire.co.uk/new-model-adviser/beards-breasts-and-bricks-20-of-the-world-s-weirdest-taxes/a680247#i=6>>.

²⁸ Harry Choron, *Money* (Chronicle Books, 2011) 300.

²⁹ Martin Phillips, *Taxes that really do take the pee* (27 November 2009) The Sun < <http://www.thesun.co.uk/sol/homepage/news/money/1981483/Taxes-that-really-do-take-the-pee.html>>.

found today in Irish and English houses with bricked and boarded up windows.³⁰ A \$5 per customer 'pole tax' is levied in Texan strip clubs to raise money to combat sexual assault and provide health insurance for low income earners.

AUSTRALIAN LEVIES

In contemporary society, levies are seen as 'soft' charges that usually escape the age old negative view of taxes. This is why so many 'new' charges are called levies rather than taxes; a trend that is escalating, especially in Australia. Levies are perceived as more acceptable in Australian society because of support for social policies and the historical resistance to introducing further taxes.

The Flood Levy of 2011/2012 introduced by the *Tax Laws (Temporary Flood Reconstruction Levy) Act 2011* (Cth) and the *Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Act 2011* (Cth)³¹ was imposed to finance the rebuilding of roads, schools and other infrastructure affected by the Queensland floods. The Flood Levy raised a total of \$1.8 billion in revenue for flood relief.³² Certain taxpayers were liable to pay the levy based on their taxable income for the 2011/2012 financial year. The 0.5% levy rate was applicable to taxable income in excess of \$50,000 and up to \$100,000. A 1% levy rate applied to taxable income in excess of \$100,000.³³ For example, if Michael has an income of \$53,000 per annum, his Flood Levy would be calculated at 0.5% of \$53,000 or \$265.

The National Disability Insurance Scheme ('NDIS') of May 2013 will raise an expected \$10.4 billion between 2014-2015 to support disabled Australians.³⁴

³⁰ Ibid.

³¹ David Penberthy, 'A Politically Heavy Levy' (23 January 2011) Adelaide Now <<http://www.adelaidenow.com.au/ipad/penberthy-a-politically-heavy-levy/story-fn6bqphm-1225992886223>>.

³² *The Independent* 'The Flood Levy Debate' (24 February 2011) <<http://www.independentaustralia.net/2011/politics/the-flood-levy-debate-pointless-partisan-politics/>>.

³³ Individuals were exempt from the levy if they had a taxable income of \$50,000 or less.

³⁴ Amber Jamieson and Sasha Petrova, 'Why we will happily pay the NDIS Medicare levy- just don't call it a tax' (2 May 2013) Smart Company

Most of the NDIS budget will be raised by increasing the current 1.5% Medicare Levy to 2% for most Australian taxpayers. The *Australian Financial Review* criticises the NDIS announcement and states 'while the disability cause is worth a levy, it should be paid for by cutting spending on something less worthy'.³⁵ Pursuant to the *Medicare Levy Act 1986* (Cth) most Australian residents³⁶ are liable to pay a Medicare Levy based on their taxable income at the current flat rate of 1.5%.³⁷ For example, if Helen has an income of \$28,000. Helen will be required to pay the current Medicare Levy of 1.5% of \$28,000 or \$420.

Despite the temporary nature of levies, the Medicare Levy has been in place since the 1980s. Its permanency is giving a bad name to the title 'levy'.

WHO CAN IMPOSE A LEVY?

Federal, state and local level governments can impose both taxes and levies by enacting appropriate legislation.³⁸ The federal government usually collects revenue according to federal levy legislation and disperses monies to relevant state or territory governments, who are responsible for governing tax and/or levies at the state or territory level.³⁹ Local governments usually impose levies or taxes in the form of land rates and other service charges to perform essential local services. Courts and tribunals apply the principles of statutory interpretation to resolve disputes regarding tax and levy legislation.

<<http://www.smartcompany.com.au/tax/055348-why-we-ll-happily-pay-the-ndis-medicare-levy-just-don-t-call-it-a-tax.html>>.

³⁵ Ibid.

³⁶ Full or partial exemption from the levy is granted to certain low income tax earners, seniors, Defence Force members and some trustees etc.

³⁷ Leo Shanahan, *Should we pay a Flood Tax?* (22 January 2011) The Punch <<http://www.thepunch.com.au/articles/are-you-happy-to-pay-extra-tax-after-the-floods/>>.

³⁸ For example, Agricultural Product Levies are enacted pursuant to the *Primary Industry Levies and Charges Collection Act 1991* (Cth), *Horticultural Marketing and Research and Development Services Act 2000* (Cth) and *Meat Industry (Meat Industry Levy) regulation 1994* (NSW). CCH Australia, *Australian Master Tax Guide 2013* (CCH Australia, 52nd edition, 2013) 100.

³⁹ State and territory governments traditionally govern matters such as stamp duties, land tax and payroll tax.

CONCLUSION

A levy is defined as a temporary measure to raise revenue and provide for a social purpose or mitigate a crisis which is generally supported and understood by society.⁴⁰ Nevertheless, the increasingly permanent nature of some levies, for example the Medicare Levy, confirms that definitional lines between a levy and a tax are becoming increasingly blurred. Experience has shown that Australians are willing to pay levies in times of need and for the vulnerable in society. This is evident in the positive public reaction to the enactment of the new NDIS scheme. The government can finance social legislation or public policies by allocating revenues from general taxation. Because levies are seen as a 'soft' tax and thus more palatable, they may continue as the favoured technique or vehicle for government charges and not just for 'one off' emergency funding. We cynically might comment, a levy is just a tax, after all.

⁴⁰ Paul Kenny, *Australian Tax 2013* (Lexis Nexis Butterworths, 2013) 30.

Appendix 1: Taxes on personal income world comparative table⁴¹

Table 0.1 Comparison of total tax wedge
As % of labour costs¹

Country ²	Annual change 2011/10 (in percentage points)				
	Total Tax wedge				
	2011	Tax wedge	Income tax	Employee SSC	Employer SSC
	(1)	(2)	(3)	(4)	(5)
Belgium	55.5	0.16	0.04	-0.01	0.13
Germany	49.8	0.59	0.04	0.28	0.28
Hungary	49.4	2.77	2.39	0.39	0.00
France	49.4	0.03	0.04	-0.01	0.00
Austria	48.4	0.24	0.24	0.00	0.00
Italy	47.6	0.44	0.44	0.00	0.00
Sweden	42.8	0.04	0.05	0.00	0.00
Finland	42.7	0.24	0.08	0.03	0.13
Slovenia	42.6	0.11	0.11	0.00	0.00
Czech Republic	42.5	0.38	0.38	0.00	0.00
Estonia	40.1	0.09	0.09	0.00	0.00
Spain	39.9	0.14	0.14	0.00	0.00
Portugal	39.0	1.38	1.38	0.00	0.00
Slovak Republic	38.9	0.95	0.95	0.00	0.00
Denmark	38.4	0.09	0.08	0.00	0.00
Netherlands	37.8	-0.34	-0.14	0.01	-0.21
Turkey	37.7	-0.16	-0.16	0.00	0.00
Norway	37.5	0.25	0.03	-0.02	0.24
Luxembourg	36.0	1.65	0.29	0.72	0.64
Poland	34.3	0.12	0.12	0.00	0.00
Iceland	34.0	0.63	0.63	0.00	0.00
United Kingdom	32.5	-0.08	-0.56	0.25	0.23
Canada	30.8	0.33	0.19	0.00	0.14
Japan	30.8	0.58	-0.09	0.33	0.34
United States	29.5	-0.93	0.93	-1.82	-0.04
Ireland	26.8	0.95	3.82	-2.87	0.00
Australia	26.7	-0.18	0.04	0.00	-0.22
Switzerland	21.0	0.27	0.10	0.09	0.09
Korea	20.3	0.20	-0.22	0.23	0.19
Israel	19.8	0.41	0.32	0.05	0.03
Mexico	16.2	0.62	0.59	0.00	0.04
New Zealand	15.9	-1.12	-1.12	0.00	0.00
Chile	7.0	0.00	0.00	0.00	0.00
Greece ³					

1. Single individual without children at the income level of the average worker.

2. Countries ranked by decreasing labour costs.

3. The 2011 figures for Greece are not currently available

⁴¹ Table sourced from OECD, *Tax burden on earnings in OECD countries* (25 April 2012) OECD < <http://www.oecd.org/newsroom/taxtheaveragetaxburdenonearningsinoecd/countriescontinuestorise.htm>>.