Tēnā koutou and welcome

It is with great pleasure that we welcome you to the 29th annual Australasian Tax Teachers' Association (ATTA) conference. We would like to recognise at the outset the financial support of the School of Accounting and Commercial Law at Victoria University of Wellington, Oxford University Press, Thomson Reuters, Wolters Kluwer and Chartered Accountants Australia and New Zealand.

Since it was first held in 1989, the ATTA conference has provided a forum for presentation of research, scholarship and teaching in relation to all aspects of taxation. ATTA's annual conference provides tax academics across Australasia, and the rest of the world, the opportunity to develop their research and teaching networks and to advance the development of education in taxation law and related disciplines.

Taxation and its many facets are important to New Zealand and its people, businesses, consumers, creators and innovators, and consequently to Wellington's government community and to Victoria as a civic university. This year, we are fortunate in having keynote speakers from academia, administration and practice: Professor Valerie Braithwaite from Australian National University; Mr David Carrigan from Inland Revenue, Ms Carmel Peters from Inland Revenue; and Mr Peter Vial from Chartered Accountants Australia and New Zealand. We would like to take this opportunity to thank each of these speakers for agreeing to present at our conference this year. Apart from these keynote addresses, this conference includes presentations of papers by academics, PhD students, practitioners and government officials working in a wide range of countries including Australia, China, Indonesia, New Zealand, Qatar, South Africa and the United Kingdom.

Victoria University of Wellington is delighted to host you at this event. We welcome you to the Wairarapa and look forward to spending three days of engaging plenaries, insightful presentations and fun social events.

Organising committee contact details during the conference:

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AUSTRALASIAN TAX TEACHERS' ASSOCIATION ANNUAL CONFERENCE

TAX AND SOCIETY

18-20 January 2017

Wednesday 18 January 2017			
09.30-10.30	Registration	Morning tea from 10am	
10.30-10.40	Welcome		
10.40-12.20	PhD Presentations	Chair: Jonathan Barrett	**Solway II**
	Emily Millane (ANU): The Politics of Australian Superannuation Mochammad Hadi Pratomo (RMIT): Investigating income tax compliance risks of large businesses in Indonesia Abu Tariq Jamaluddin (Utara Malaysia): A legal analysis of transfer pricing in Malaysia Dylan Hobbs (VUW): The historical use of land value taxation in New Zealand, 1890-1990		
12.20-1.00	Lunch - The Grill Restaurant		
1.00-2.15	PhD Presentations	Chair: Jonathan Barrett	**Solway II**
	Andy Wardhana (QUT): An analysis of Indonesia's tax cases to determine transfer pricing disputes Carika Fritz (Pretoria): Accountants' tax privilege - a stretch too far for South Africa? Niken Evi Suryami (Monash): General anti-avoidance rule (GAAR): An option to tackle aggressive tax planning in Indonesia		
2.15-2.30	Afternoon Tea - Solway I		
2.30-3.20	PhD Presentations	Chair: Jonathan Barrett	**Solway II**
	Nikolay Shekhovtsev (Canterbury): One more thought on the issue of tax compliance cost burden for large enterprises in New Zealand: application of rational choice model to tax compliance administration Jonathan Nguyen (UNSW): Corporate tax aggressiveness in the financial crisis environment		
3.40	Buses depart hotel for opening function		
4.15-7.30	Opening function, Pukaha Mt Bruce National Wildlife Centre		
7.30	Buses depart Pukaha Mt Bruce National Wildlife Centre to return to hotel		

Thursday 19 January 2017			
08.30-9.00	Registration		
09.00-9.20	Official welcome Opening by ATTA President Professor Adrian Sawyer Welcome from the ATTA organising committee		**Solway II**
09.20-10.10	Keynote Speaker Valerie Braithwaite, Australian National University: Tax, citizens and sovereignty: Bygone ideas or time for reinvention?		
10.10-11.00	Keynote Speaker David Carrigan, Inland Revenue: The Government's tax policy work programme - what's on it and how this could change		
11.00-11.30	Morning Tea - Solway I		
Parallel Session 1	**1A: Tax Disputes** **Solway II** **Chair: Andrew Smith**	**1B: Tax and Welfare** **Solway III** **Chair: David White**	**1C: Tax Admin** **Solway IV** **Chair: Adrian Sawyer**
11.30-12.00	Binh Tran-Nam and Michael Walpole Effective access to independent tax dispute resolution in Australia: The tax adviser's perspective	Patrick Nolan Family and employment tax credits and effective marginal tax rates	Catherine Brown and John Minas Revisiting the Priority of Taxation Claims in Insolvency
12.00-12.30	Shelley Griffiths Resolving tax disputes – thinking further about the balance between administrative process and judicial determination	Jonathan Barrett Tax and Welfare in a Post-Labour Defence Society	Kristian Agung Prasetyo Tax administration reform and the society in Indonesia: some lessons learnt
12.30-1.00		Eva Huang and Xi Nan Contributing to the Individual Income Tax Reform Debate in China: Is Family Based Filing of Individual Income Tax Returns a Feasible Solution to the Social Problems arising from the Increasing Family Income Inequality in China?	Helen Hodgson and Suzy Morrissey Gender Budgeting – Governments, Civil Society and Gender Bias in Tax Policy
1.00-2.00	Lunch - The Grill Restaurant		
Parallel Session 2	**2A: Education** **Solway II** **Chair: Lisa Marriott**	**2B: International 1** **Solway III** **Chair: Andrew Smith**	**2C: Compliance** **Solway IV** **Chair: Ranjana Gupta**
2.00-2.30	Brett Freudenberg Beyond Lawyers: Legal literacy for the future	Antony Ting Base Erosion and Profit Shifting by Intra-group Debt - A Case Study of Chevron	Rob Whait Tax Law, Compliance and Punishment: A social construction
2.30-3.00	Annette Morgan Taxation Education in Secondary Schools – What Are Students Actually Being Taught?	Alison Pavlovich Thin capitalisation: a new model for calculating debt percentage?	Metin Argan and Kev Devos Factors that influence Tax Evasion in Australia and Turkey: A Structural Equation Modeling Study

	John Taylor, Ann Kayis-Kumar and Kathrin Bain	Saurabh Jain and John Prebble	
3.00-3.30	Gamifying the tax system: International tax teaching with the PlayTax simulation	The *Swiss Swap* Case Revisited	
3.30-4.00	Afternoon Tea - Solway I		
Parallel Session 3	**3A: Ethics and Tax** **Solway II** **Chair: Rob Whait**	**3B: Tax Reform** **Solway III** **Chair: David White**	**3C: Compliance** **Solway IV** **Chair: Kristian Agung Prasetyo**
	Ellie Chapple, Kerrie Sadiq and Feng Xiong	Tony Fakahau	Ahmad Komara
4.00-4.30	An Investigation into Corporations using Twitter to Engage in Tax Impression Management	Impact Evaluation of Tax Reform in Tonga	Tax Practitioners' role in the tax system: some evidence from Indonesia
	Catriona Lavermicocca	Mahmoud M. Abdellatif, Ashraf Galal and Binh Tran-Nam	Hugh Zillmann and Christine Newport
4.30-5.00	Tax risk management and the application of ethics by large Australian companies	Oil Prices Fluctuations and the Need for a Tax Policy Reform in the State of Qatar	Adrift in a Sea of Revenue Law and Regulation without a proper paddle
		Ranjana Gupta	
5.00-5.30		Filling the Land Tax Void: New Zealand standpoint	
5.30-6.30	Free time		
6.30-7.00	Pre-dinner drinks		
7.00-10.30	Conference dinner - Solway III and IV		

Friday 20 January 2017				
9.00-9.45	Keynote Speaker Carmel Peters, Inland Revenue: BEPS: Past, Present, Future			**Solway II**
9.45-10.30	Keynote Speaker Peter Vial, Chartered Accountants Australia and New Zealand: The future of the tax profession; the tax profession of the future			
10.30-11.00	Morning Tea - Solway I			
11.00-11.40	Patron's address			**Solway II**
Parallel Session 4	**4A: Case Studies** **Solway I** **Chair: Shelley Griffiths**	**4B: Globalisation & Innovation** **Solway II** **Chair: Brett Freudenberg**	**4C: International (2)** **Solway III** **Chair: Alison Pavlovich**	**4D: GST** **Solway IV** **Chair: David White**
11.40-12.10	Thabo Legwaila The status of transfer pricing regulations in Sub-Saharan Africa and the tax authorities' enforcement mechanisms thereof	Andrew Smith Immigration and Retirement Income Policies: How Well Does New Zealand Treat Its Migrants?	Ann Kayis-Kumar Socio-political challenges to taxing multinationals: Do corporate tax cuts improve efficiency?	Julie Cassidy A GST with GRRRRRR: Legislative responses to GST tax avoidance in Australia and New Zealand
12.10-12.40	Elen Seymour and Dale Boccabella (Presented by Kathrin Bain) Thirty Years of the Myer Income Strands: Nature, Scope and Interaction with other Charging Rules	Stephen Graw Encouraging Innovation – The Tax Laws Amendment (Tax Incentives for Innovation) Act 2016		Lynley Woodward and Lin Mei Tan GST compliance in New Zealand: A comparative study of taxpayers in the primary and trades sector
11.40-12.40	**ATTA Executive Meeting**			
12.40-1.40	Lunch - The Grill Restaurant			
Parallel Session 5	**5A: Environmental** **Solway I** **Chair: Jonathan Barrett**	**5B: Tax History** **Solway II** **Chair: Andrew Smith**	**5C: Tax Policy** **Solway III** **Chair: Patrick Nolan**	**5D: Literacy and Tax Advice** **Solway IV** **Chair: David White**
1.40-2.10	Diane Kraal The Petroleum Resource Rent Tax 1987: Overview of primary documents	John McLaren The economic development of Northern Australia: a critical review of the taxation benefits and incentives both past and present and the potential taxation options for the future.	Carolyn Palmer Tax Policy for Good Times and Bad: An assessment of tax policy responses to natural disasters	Steven Stern Tax and Society: Does The Tax Advice Industry Perform A Positive Role?

	Hope Ashibor	Rob Vosslamber	Craig Latham	David Massey, Phyllis Alexander and Merima Balavac
2.10-2.40	Green Tariffs and related instruments in environmental policy	A Tax or a Fine? The Development and Relevance of Tobacco Taxation	Family resemblance and the elasticity of tax regulation	What does it mean to be 'tax literate'? What should 'society' know about tax if the UK is to establish a lasting tax consensus post-Brexit?
2.40-3.10	Anna Mortimore Australian and New Zealand Transport Policy Measures	John Passant A brief thematic history of income tax in Australia	Neil Buchanan Tax and Other Issues after the 2016 U.S. Elections	
3.10-3.20	Afternoon Tea – Solway I			
3.20-4.20	ATTA Annual General Meeting			Solway II
4.20-4.30	Closing words, prize-giving and ATTA 2018			
4.30-6.30	Farewell social event			

Speaker Biographies

Professor Valerie Braithwaite, Australian National University, Canberra

Valerie Braithwaite is a Professor of the Regulatory Institutions Network (RegNet) in the School of Regulation and Global Governance at the Australian National University. Her research focuses on how authorities relate to those they are regulating, particularly with regard to managing resistance and defiance and building social capital and commitment to regulatory objectives. Her publications include "*Defiance in Taxation and Governance: Resisting and Dismissing Authority in a Democracy*", "*Taxing Democracy: Understanding Tax Avoidance and Evasion*", "*Trust and Governance*" and "*Hope, Power and Governance*". Valerie served on the ATO's Cash Economy Taskforces (1995-2005), was an expert member of the Australian Government's National Skills Standards Council (2011-2014), and with Kwong Lee Dow undertook the *Review of High Education Report* (2013) for the Australian Government. She worked with the ATO to develop their responsive regulatory Compliance Model, advised the OECD on its adoption internationally, and was Director of the Centre for Tax System Integrity (1999-2005), a flagship for ANU's Regulatory Institutions Network.

Mr David Carrigan, Policy Director – Internal, Policy and Strategy, Inland Revenue, Wellington

David's role as Policy Director is to direct the development, delivery and communication of the government's tax policy work programme. He is also responsible for overseeing the policy development to frame and shape Inland Revenue's Business Transformation (tax administration for the 21st century).

David has a wealth of experience in providing tax policy advice and over the past 19 years he has been involved in a wide variety of issues including the taxation of savings, personal tax cuts and a number of international tax issues. David has managed a number of tax budgets, and also the tax reform of investment – resulting in the new PIE and FDR rules.

David is currently Acting Deputy Commissioner of Inland Revenue.

Ms Carmel Peters, Inland Revenue, Wellington

Carmel is a policy manager for Policy and Strategy, Inland Revenue, in New Zealand. She is currently managing the review of New Zealand's international tax rules which involves comprehensive reform of the taxation of outbound investment. Carmel negotiates New Zealand's double tax agreements and is the New Zealand delegate to Working Party 1 (Tax Treaties) at the OECD. Carmel was recently appointed to the United Nations Committee of Experts on International Co-operation in Tax Matters.

Mr Peter Vial, Chartered Accountants Australia and New Zealand, Auckland

Peter Vial (CA, LLB, BA, M iur. com) has led the New Zealand tax team at Chartered Accountants Australia and New Zealand since early 2013. Formerly he was an executive director at PwC, leading the firm's Tax Technical Knowledge Centre, and an Associate Professor in the University of Auckland's Business School. Peter is an adjunct teacher on the University's Masters of Taxation Studies programme. He has also been a member of the New Zealand Government's Rewrite Advisory Panel.

ABSTRACTS

Oil Prices Fluctuations and the Need for a Tax Policy Reform in the State of Qatar

Mahmoud M. Abdellatif[1], Ashraf Galal[2] and Binh Tran-Nam [3]

Like all other resource-rich countries, the oil and gas sector in Qatar represents the major source of government revenue. The dominance of oil revenues decreases the importance of implementing and managing the tax policy in Qatar in a way to generate significant tax revenues and eliminates the functional role of taxes. Furthermore, the tax culture is absent among citizens and residents in Qatar. Such situation might be acceptable if the international oil price is consistently high, which could result in a budget surplus in resource-rich countries but, unfortunately, oil prices fluctuates sharply over time.

For example, after more than a decade of low oil prices during the 1990's, oil prices had significantly increased to high levels during the period 2003-2014 before they decline again since the last quarter of 2014. This decline in oil prices has significantly affected the government revenue in Qatar. In response to that decline, the government started implementing a budget cut policy through rationalizing government expenditures in general, and decreasing or delaying some of the government projects (government capital expenditure). As the government budget affects the national economic development plan, this budget cut is expected to have a negative impact on GDP growth rate in both the short and long run. In order to mitigate the impact of oil prices decline, the government may consider reforming tax policy as a tool to stabilize the economy and generate revenue.

Thus, this situation addresses the following research question "what is the proper tax policy to cope with oil prices fluctuation in Qatar". Answering this research question requires investigating the possibility of reforming the tax policy in Qatar and revive its functional role in the economy not only an important tool to raise stable government revenue (rather than just focusing on the expenditure side only), but also as an economic tool that could be used in steering the resource allocation process in the private sector. Accordingly, this paper aims to achieve the following objectives; (1) Assessing the current tax policy in Qatar in terms of its economic functions, and (2) proposing the required tax policy reforms to deal with oil prices fluctuation. In order to achieve both objectives, a mixed research methodology will be used through using qualitative and quantitative approach. The qualitative approach will assess the existing tax policy practices in terms of benchmark criteria for a good tax system which are, economic efficiency, revenue adequacy, simplicity and equity. On the other hand, the quantitative approach will use econometric model (time series analysis) to identify the relation between oil prices, government revenue as well as tax revenue. This will help us to identify the need of tax policy reform and what is the proper tool of tax policy that may be used. In doing so, this research paper will be structured as follows: section 1is introduction, section2 reviews the scholarly works related to proper tax policy in oil exporting countries either developed or developing countries, section 3 reviews tax policy practices in Qatar and assess it against benchmark criteria of good tax policy, section 4 identifies the relation between oil prices, government revenue as well as tax revenue through developing econometric model, section 5 is an analysis of results, and section 6 is concluding remarks and recommendations.

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Factors that Influence Tax Evasion in Australia and Turkey: A Structural Equation Modelling Study

Professor Metin Argan, Anadolu University, Turkey and Dr. Ken Devos, Monash University, Australia

The tax literature indicates that many factors impact upon and influence tax evasion and non-compliant behavior. In particular it is well documented in the tax literature, that fairness of the tax system (Cowell, 1992), government enforcement (Alm et. al., 2010) and taxpayer's morals and ethics (Torgler, 2009, Murphy, 2004), all play a key role in determining the level of tax evasion. In the economic literature there has been evidence of the factors which have impacted upon economic growth and the well-being of a country's citizens. These include, the issue of rivalry amongst individuals regarding income levels, over estimation of the benefits of increased consumption and generally a level of inequality in society (Griffith (2004). These later economic factors have also influenced tax evasion behavior.

However, it is evident that while tax and economic studies have investigated these and other factors independently fewer studies have incorporated a combination of these factors in conducting multidisciplinary research. This paper proposes to overcome this research gap, and makes a contribution to the tax literature by investigating a combination of specific economic factors that impact upon tax evasion, employing a Structural Equation Model (SEM). In particular, the study examines the structural relationships between national well-being, life satisfaction, tax involvement and tax evasion.

Following a recent study investigating tax evasion attitudes in Australia and Turkey, this study builds on that prior research by using these four distinct variables in a SEM, employing real taxpayer data from both Australia and Turkey. The justification for comparing Australia and Turkey was because of the diverse, economic, religious and cultural differences and how that may impact upon the results.

The study developed a reliable and valid measurement scale for taxpayer specific involvement to better understand the impact of involvement in a tax setting Churchill's (1979) and revealed that tax involvement dimensions related to both samples of Turkish and Australian taxpayers. Consequently, this study revealed a new scale on tax involvement which demonstrated reliability, multidimensionality, validity, as well as consistency across the Turkish and Australian samples.

The research revealed a relationship between the various dimensions. The overall results showed that life satisfaction plays a central role in the model. Although the relationship between life satisfaction and tax involvement was weak it was statistically significant. A negative relationship was found between life satisfaction and tax evasion, indicating that satisfaction with life may be a mediator between tax evasion, national wellbeing and tax involvement. The results of this study also indicate that tax evasion and tax involvement somehow relate to national wellbeing and life satisfaction. Consequently, the study found that, although tax evasion and national wellbeing correlated positively with life satisfaction, satisfaction with life had a significant negative effect on tax evasion perceptions.

The results of the study will be of interest to both the Australian and Turkish governments and have implications for tax policy development in both countries.

Green Tariffs and Related Instruments in Environmental Policy.

Dr Hope Ashiabor, Associate Professor of Law, Macquarie University, Sydney, Australia

The border tax adjustment (BTA) is one of the most forensically examined instruments in the environmental tax policy literature. The inquiry into the mechanics of this instrument has spanned across a very wide spectrum. At one end of this spectrum, the focus has taken on a qualitative dimension – focussing *inter alia* on issues such as its compatibility with the world trade rules, the measurement of the implicit price of carbon in manufactured goods, and its role as a shield to the competitiveness of carbon-intensive trade exposed domestic industries in countries that impose carbon taxes on imports originating from non-carbon taxing countries. The focus at the other end has honed in on the empirical dimensions of the scope of the instrument.

The choice of flexible mechanisms as the preferred policy package under the Kyoto Protocol brought the spotlight again on this instrument. In particular, the proliferation of emissions trading schemes raised questions about the extent to which the BTA's could be adapted to a market instrument context. This paper will revisit the literature and contemporary lessons that have been encountered in this process.

Also to be examined will be the role that other contemporary variants of the instrument have played in the wider carbon emissions mitigation strategy.

Tax and Welfare in a Post-Labour Defence Society

Dr Jonathan Barrett

The principle of labour defence has traditionally informed welfare policy in New Zealand. By promoting full employment and ensuring employers paid a living wage, government could foster economic security for the unionised workingman and his family. Nordic-style social insurance schemes, which were designed to shelter citizens from market vicissitudes, were, in the main, unnecessary. Protected and adequately paid workers, as patriarchs, could support their families, but also, as social citizens, could afford to pay income tax, and thereby contribute to the support of superannuated workers on a non-contributory, pay-as-you-go basis. Through income tax progressivity, money was redistributed from members of the middle class but they also benefited from universal pensions, mostly free healthcare and subsidisation of tertiary education.

Labour defence, characterised by its privileging employment over a broader conception of citizenship, has strong roots in New Zealand but is challenged by global trends; these include: neoliberal globalisation, an ageing population and technologically determined job losses. This paper considers tax and welfare in a post-labour defence society but one in which employment is likely to remain a privileged social status.

The discussion is grounded in local traditions and long-term trends, and avoids utopian or apocalyptic speculation. Account is taken of 'the Fourth Industrial Revolution' and predictions for 'postcapitalism' but the focus of the paper lies with plausible evolution in tax and welfare, not revolution.

The paper first identifies the principal models for welfare and the particular nature of welfare in New Zealand. Global threats to work and welfare are then outlined. Traditions and trends in New Zealand's tax-welfare system are identified in order to consider how they may evolve in response to the challenges faced. Predictions are not, from a progressive perspective, optimistic. Indeed, the paper concludes that, notwithstanding the likelihood of technologically-determined job losses, employment will continue to be a privileged social status and the focus of tax-welfare policy.

Thirty Years of the Myer Income Strands: Nature, Scope and Interaction with other Charging Rules

Dale Boccabella, Associate Professor of Taxation Law , School of Taxation and Business Law, The University of New South Wales, d.boccabella@unsw.edu.au.

Elen Seymour, Lecturer, School of Law, University of Western Sydney, e.seymour@westernsydney.edu.au

The thirty-year anniversary of the High Court decision in *FCT v The Myer Emporium Ltd* 87 ATC 4363 is approaching. One of the reasons for the significance of the case is because it is a joint judgment of a seven-member High Court bench, a comparatively rare event for Australian tax decisions. The High Court chose to overturn the decision of all four judges that heard the matter in the lower courts and in doing so canvassed some highly problematic income tax principles including the basis for measuring an income profit.

This article is a first contribution to the inevitable legacy articles and commentaries that will emerge soon. The key aim is to set out the contribution made to Australian income tax law by the *Myer* decision. This includes an examination of the nature and scope of the two income doctrines in *Myer* (now known as the two income strands of *Myer*) and the relationship between those two strands. The article also discusses the relationship between the two strands (mainly the first strand) in *Myer* and another assessable income provision, namely, s 15-15 (profit from profit-making undertaking or plan). Finally, the article canvasses other charging provisions that may need to be considered in a transaction that has features similar to that in the *Myer* decision.

Tax, citizens and sovereignty: Bygone ideas or time for reinvention?

Professor Valerie Braithwaite, Australian National University, Canberra

Globalization and de-regulation have radically changed the relationship of citizens to the state. Citizens feel the effects of regulatory capitalism. The activities of the tax and financial planning industry are as important as the activities of state revenue agencies in the taxpaying behaviour of individuals and corporations globally. So how is tax to be collected and justified in this new world order? How can taxpayers be sure that benefits will flow from their tax paying, that tax is being collected fairly, and on what basis should taxpayers feel a moral obligation to pay tax? With so many unanswered questions, the area of tax research needs to expand both in terms of who is participating and what skills are being brought to the table. Bridging capital is urgently needed between 'tax technical' and 'tax social', between practitioners and scholars, between theory and practice, between revenue authorities and those involved in the tax and financial planning industries. How do we best do that? This is the challenge addressed in this paper.

Revisiting the Priority of Taxation Claims in Insolvency

Catherine Brown and John Minas, Griffith University

In 1988, the Harmer Report recommended that the priorities that were previously afforded to the Australian Taxation Office (ATO) in corporate insolvency should be abolished. This recommendation was premised on the principle of *pari passu*, which holds that all unsecured creditors should receive a proportionate share of the assets available for distribution in insolvency. In recent years it has become evident that there are several ways in which the Commissioner of Taxation may obtain indirect priority over unsecured creditors. Furthermore, it is arguable that taxation law is being developed in a manner which is inconsistent which insolvency law and the *pari passu* principle.

The paper also considers the treatment of taxation of capital gains in the context of insolvency law. It is a requirement of s 254(1)(d) of the ITAA36 that trustees, which by definition includes liquidators, "retain from time to time…so much as is sufficient to pay tax which is or will become due in respect of the income, profit or gains." What is not clear is whether s 254(1)(d) requires liquidators to retain the whole tax liability owing on the sale of assets in the winding up of a company or an amount calculated in accordance with the *pari passu* principle.

In a recent test case (*Commissioner of Taxation v Australian Building Systems Pty Ltd (in liq); Commissioner of Taxation v Muller and Dunn as Liquidators of Australian Building Systems Pty Ltd (in liq)* [2015] HCA 48), the High Court considered the operation of s 254(1)(d) and the impact of that section on liability for capital gains tax in the context of insolvency. Unfortunately, the issue before the court was ultimately on whether or not a notice of assessment is required for the retention obligation imposed by s 254(1)(d) to be engaged. Thus, the issue of whether s 254(1)(d) provides the Commissioner with a priority for capital gains tax in insolvency remains unresolved.

On one view, tax on gains in s 254(1)(d) refers to the tax payable on net capital gains calculated strictly in accordance with Parts 3-1 and 3-3 of the ITAA97, resulting in the capital gains tax being an expense of liquidation, paid in preference to unsecured creditors. The alternative view is that the notional capital gain that accrues prior to liquidation is a provable contingent liability in accordance with s 553 of the Corporations Act 2001 and, as such, would be paid to the Commissioner on a *pari passu* basis.

If this alternative view is to be accepted, it may require a change to the approach to taxing capital gains in Australia on a realisation basis.

Tax and Other Issues after the 2016 U.S. Elections

Professor Neil Buchanan, The George Washington University Law School, Washington D.C.

This session is being held on the same day as Donald J. Trump's inauguration as the President of the United States. Worried Americans have no idea what will happen under the new regime, and the rest of the world is possibly even more anxious. In this talk, Professor Buchanan will discuss the possible changes that the new Administration will unleash, focusing first on tax and economic policy but also addressing threats to the rule of law, democracy, and the future of life on earth.

A GST with GRRRRRR: Legislative responses to GST tax avoidance in Australia and New Zealand

Julie Cassidy, Professor, Department of Commercial Law, The University of Auckland; Fellow, Taxation Law and Policy Research Institute, Monash University

GST is a transaction tax and therefore it would be thought it would be hard to avoid. Beyond blatant evasion through the non-declaring of GST subject income, the paper details the ways 'naughty 'taxpayers have exploited the GST regimes in both Australia and New Zealand to create artificial tax advantages. In response these Nations have sought to tackle the problem of GST tax avoidance through General Anti-Avoidance Rules ('GAAR's) rather than relying solely on specific Targeted Anti-Avoidance Rules ('TAAR's). The New Zealand GST GAAR is found in s 76 *Good and Services Tax 1985* ('GSTA 1985') and, in its current version, echoes the *Income Tax Act 2007* GAAR, s BG1. The Australian GST GAAR is contained in Division 165, in particular s 165-5, *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('*GST Act 1999*'). Again it is largely based on Part IVA *Income Tax Assessment Act 1936* (Cth) ('*ITAA 1936'*). However, it will be seen the GST GAAR is in fact broader than Part IVA in a number of important respects.

This paper compares and contrasts the GST GAARs in these two Nations in a bid to determine if one model is optimal. While the legislative goals of each are broadly similar, the approach reflected in the legislation differs dramatically. The Australian legislation is quite prescriptive. Section 165-5 *GST Act 1999* sets out a number of conditions, such as "scheme" (s 165-10(2)), "GST benefit" (s 165-10(1), that must be met for the GAAR to apply. Even the final element, the question whether the principal effect or sole purpose of the scheme (or part of the scheme) was to obtain a GST benefit, is determined by a number of factors stated in s 165-15, *all* of which *must* be considered by a court. By contrast, while the New Zealand legislation identifies prerequisites to the application of the GAAR, such as arrangement" (s 76(8)) and "tax avoidance"(s 76(8)), these are defined very broadly. Moreover in contrast to the Australian s 165-15, there is no legislative guidance in s 76 to assist the courts in coming to the conclusion whether obtaining the GST benefit was one of the purposes or effects of the arrangement. It will be seen that instead the courts have developed judicial doctrines to be applied when determining the crucial question in s 76(1) whether an arrangement amount to GST avoidance arrangement. As discussed, this was an intended policy on the part of the New Zealand Parliament.

Ultimately, particularly in light of the dearth of authority in both jurisdictions, it is contended that the broad approach in the New Zealand legislation is too uncertain, particularly as it is based on judicial discretion. The prescriptive approach in the Australia GST Act gives taxpayers and their advisors greater guidance and also provides the courts with direction.

An Investigation into Corporations using Twitter to Engage in Tax Impression Management

Professor Ellie Chapple,[*] QUT Business School, Brisbane, Australia

Professor Kerrie Sadiq, QUT Business School, Brisbane, Australia

Feng Xiong, School of Management, Xiamen University, China

Twitter™ is a social media tool that is widely recognised as an important societal communication mechanism. It has also become an important corporate disclosure practice. However, there has been little investigation into the use of Twitter by corporations to disseminate information about corporate tax obligations, tax practices, government tax proposals and tax reform. Data analysis reveals that corporations use Twitter to comment on 'tax' related issues. As such, the purpose of this study is to investigate the use of *Twitter* by corporations to disseminate tax related information. The paper addresses three related research questions; first, what is the nature and extent of tax related tweets by Australian listed companies; second, what is the message delivered in tax tweets by major Australian corporations; and third, what is the underlying rationale for a company to use *Twitter* to deliver a message about tax? The ultimate purpose of this study is to propose a rationale for the use of *Twitter* as a medium to deliver a message about tax and to analyse the message within a theoretical framework.

To address the research questions, the study analyses tweets of 82 ASX listed corporations over the period of 2008 to 2013. Data collected during the sample period results in a total of 64,933 tweets. These tweets are filtered using 'tax' as a key word, which retains tweets that have the keywords of 'Tax' and 'Taxes'. The filtering processes reduce the sample to comprise only tweets that specifically mention the word tax, whether in the context of financial information or not. This sample of tweets is evaluated using content analysis to categorise sentiments into major themes. Content analysis, a rich investigative tool into the language used by corporations, allows research questions one and two to be addressed by identifying the underlying theme of the message. To assist with research question three, the major themes are divided into two broad categories: tweets that relate to external matters (for example, comments on government proposals and social awareness messages) and tweets that relate to internal matters (for example, financial reporting of after tax profits and contributions to government through taxes).

To answer research question three and explain the use of *Twitter* by corporations to deliver tax messages, impression management theory is employed to propose that 'good news' tax tweets are internalised or owned by the corporation but 'bad news' tax tweets are externalised or disowned by the corporation. While traditional theoretical frameworks such as stakeholder theory, agency theory or institutional theory are generally used to investigate corporate reporting and behaviour, this paper uses impression management theory due to the nature of *Twitter* being a social media outlet which uses 'push' technology to send information directly to users.

Impression management theory argues that information is designed by the deliverer to be used in a goal oriented process (whether conscious or subconscious), which attempts to influence the perceptions of users. The information is regulated and controlled by the deliverer within a social interaction setting. As such, the information is presented in a way which leads to a favourable public image of the deliverer so that the users will also form a positive view. Overall, we conclude that because tax is generally seen as an externality, or a cost imposed on corporate taxpayers that cannot be controlled by the firm, corporations commonly use language which externalises tax related messages, that is, tweets attempt to depict a company positively, for example through a perceived social awareness message.

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Impact evaluation of tax reform in Tonga

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The Kingdom of Tonga embarked on a revenue reform programme between 2001 and 2006. The rationale given, was revenue generation to cover high public expenditure and poverty alleviation.

The revenue reform package included the implementation of a Value-Added Tax (VAT) known as the Tongan Consumption Tax alongside income tax refinements and customs duty changes to cigarettes and alcohol. Evidently, Consumption Tax has now become the main tax revenue generator for the government.

The purpose of this study is to find out the social and economic impact of the revenue reform programme on the vulnerable sector (as defined by the WHO) in Tonga. This will also include investigating the outcomes achieved such as efficient revenue collection and whether this has improved the wellbeing of the Tongan people and reduced the gap between the rich and poor. This topic has not been investigated thoroughly so the results will provide information that will be useful for donor agencies, the people and government to identify policy areas that need improvement as well as what has/has not worked according to the intentions of the policy.

This study will employ the impact evaluation technique of "Regression Discontinuity Design (RDD)." The methodology will involve a mixture of cultural research techniques such as the Talanoa Research Framework alongside surveys, case studies and village fono (focus groups) with the key stakeholders in the main areas as well as rural communities. The Talanoa method is used when researching Pacific people because of its cultural focus and enabling participants to dialogue in a safe environment without fear of offending others.

I am passionate and interested in this topic because I was part of the international team of consultants that implemented the reform programme for Tonga in 2005. Now, the focus is on evaluating the aspects of the programme ignored in other post-implementation monitoring.

Existing tax theory mostly focuses on the general economic benefits of tax reform policies for developing countries but provides limited analysis on the social impact on the vulnerable sector. The voice of the vulnerable groups in society is silent when decision-makers approve development programmes designed to generate economic growth. This type of policy decision-making has ramifications in the long-term for the vulnerable because their wellbeing is severely compromised. The revenue reform has significant impact on the behavior of taxpayers and part of the research will highlight the life stories of those citizens who have experienced the various revenue regimes.

The results of the study will contribute to tax practices and policy development for donors and the Tongan government in their efforts to assist the vulnerable communities.

Beyond Lawyers: Legal literacy for the future

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Modern life can be demanding for individuals, and individuals can require literacy in many areas beyond reading and writing. A growing area of concern has been financial literacy, as individuals face a myriad of decisions that are critical to their financial well-being (ASIC, 2011). There have been recent arguments that financial literacy should be expanded to include legal knowledge, especially tax law (Chardon, 2011). Research has demonstrated that Australians' tax law literacy is lacking in many areas, with certain demographics at risk of lower literacy (Chardon, Freudenberg and Brimble, forthcoming).

Research has also raised concerns about the legal literacy of Australian accounting students, especially as it relates to the law about trusts (Freudenberg and Boccabella, 2014). Similarly, concerns have been raised about accountant's legal literacy of Self-Managed Superannuation Funds (SMSF) given that SMSFs are largely absent from the Australian tertiary accounting curriculum (Freudenberg and Boccabella, 2016)

An understanding of relevant laws and regulation appears to be important as research demonstrates that legal literacy of regulation could be related to compliance behaviour (Mihaylov, Tretola, Yawson and Zurbruegg, 2015). Also, legal literacy has been argued as an access to justice issue for women (Schuler and Kadirgamar-Rajasingham, 1992) and required to ensure a healthy democracy (Roznai and Mordechay, 2015). It is argued that legal literacy is an important area for future research, as a basic understanding of legal concepts and requirements can be seen as a critical skill required by individuals, businesses and advisors; and not just lawyers.

Accountants' Tax Privilege – a Stretch Too Far for South Africa?

Carika Fritz (University of Pretoria)

When a South African taxpayer requires advice regarding her affairs, she is free to approach a lawyer or a non-lawyer tax practitioner ('accountant'). Unfortunately, her choice of advisor does not simply boil down to whom she considers to be best equipped to provide her with the advice. She also needs to consider the fact that, if the South African Revenue Service exercises its information gathering powers, as provided for in the Tax Administration Act 28 of 2011, only the advice provided by the lawyer could be protected by professional legal privilege. This may be seen as an anti-competitive measure that is unfair towards accountants and the clients who sought the advice of these practitioners.

Legal professional privilege enables an advisor to provide skilled legal advice due to the fact that the client is able to place all the facts before the advisor without any fear that this information may later be disclosed to the client's prejudice. Bearing in mind this rationale for legal professional privilege, there have been numerous pleas to extend this privilege to accountants who provide advice similar to the tax advice of a lawyer. A further argument for the extension of legal professional privilege could be that the current situation is contrary to the right to equality, as provided for in section 9 of the Constitution of the Republic of South Africa, 1996.

The discourse relating to whether tax advice provided by accountants should be subject to privilege is not unique to South Africa. Australia, Canada, New Zealand, the United Kingdom and the United States have grappled with this question. Cases decided in Canada and the United Kingdom have held that there is no significant reason to elevate advice given by accountants to the same level as advice given by lawyers. On the other end of the spectrum, New Zealand and the United States have addressed the issue with legislative provisions which afford accountants a form of privilege. Currently, the Australian Tax Office acknowledges an accountant's concession in terms of which certain documents are not subject to disclosure. However, this concession is not legislated.

The discourses and approaches in the aforementioned jurisdictions, as well as the right to equality, will be considered in order to ascertain whether legal professional privilege or a "tax privilege" in relation to accountants' tax advice should apply in South Africa.

Encouraging Innovation – The Tax Laws Amendment (Tax Incentives for Innovation) Act 2016

Professor Stephen Graw

The *Tax Laws Amendment (Tax Incentives for Innovation) Act 2016* (Cth) came into effect in Australia on 1 July 2016. Its aim, as described by the Treasurer in his Second Reading Speech, is to 'foster a shift towards a culture of innovation, whereby entrepreneurial risk-taking is encouraged and rewarded'. The Act is intended to achieve that aim by implementing a range of measures that were announced in the *National Innovation and Science Agenda* that was released on 7 December 2015 - and were included in the government's *Mid-Year Economic and Fiscal Outlook 2015-16* (which was released on 15 December 2015).

The new measures are the latest in a number of tax incentive measures that have been designed to assist innovating enterprises, especially in the start-up phase, which commenced with the passage of the *Venture Capital Act 2002* (Cth) (and the associated amendments to the Commonwealth's taxation legislation and the individual state and territory Partnership Acts) to facilitate non-resident investment in the Australian venture capital industry[4] and which, most recently, saw Div 83A of the ITAA97 amended, in line with the government's *Industry Innovation and Competitiveness Agenda*, to provide, *inter alia*, a 'start-up' concession for shares and options that eligible small start-up companies issue to their employees in lieu of the higher salaries that they might otherwise be required to pay to attract the best available talent.

The new provisions are contained in a new Subdivision 360-A. They are designed to improve the environment for 'early stage investors' in innovation companies with a high growth potential by providing those investors with both a tax offset and a capital gains tax exemption for their investments – a tax treatment which is similar to that which is already accorded Early Stage Venture Capital Limited Partnerships under the existing Subdivision 118-F.

The new tax offset is a non-refundable carry-forward tax offset of 20% of the value of the investor's investment up to a maximum tax offset cap of $200,000 (with, to protect the 'non-sophisticated', a total annual investment limit of $50,000 for retail investors).

The CGT exemption allows investors to disregard any capital gains that are realized on shares in Early Stage Investment Companies where the shares have been held for between one and ten years – and that concession is not limited to shares within the $200,000 maximum tax offset cap (though, to ensure that investments are not made and then withdrawn before the company can benefit from them, any capital losses that are realized on shares that have been held for less than 10 years are also to be disregarded).

The Act also amends the present Early Stage Venture Capital Limited Partnership (ESVCLP) and Venture Capital Limited Partnership (VCLP) rules to improve access to venture capital investment and to make those regimes more attractive to investors – again, to support innovation, risk-taking and an entrepreneurial culture.

This paper will analyse the new measures and assess their likely effectiveness – especially given the threshold, equity interest and reporting requirements that companies are required to meet in order to ensure that their 'angel investors' can qualify for the concessions.

[4] In New Zealand the same considerations saw the passage of the *Limited Partnerships Act 2008* (NZ) to achieve the same aim of encouraging venture capital investment into New Zealand.

Resolving tax disputes – thinking further about the balance between administrative process and judicial determination

Shelly Griffiths, University of Otago

It is a well-observed and documented fact that the number of tax disputes that make their way into the court system has reduced significantly over the past 20 years. Some reduction was the intended consequence of the administrative disputes resolution process enacted in 1994. The more troubling question is when is reduction too much reduction.

This question has two subsets: what are the undesirable consequences of too much resolution by administrators and what are the undesirable consequences of too little resolution by the courts.

Academic commentators, practitioners and senior members of the judiciary have all expressed concerns about this. This paper aims to explore these questions principally through a public law lens and through characterising this current imbalance as a New Zealand example of 'tax exceptionalism'.

Filling the Land Tax Void: New Zealand Standpoint

Dr Ranjana Gupta

This paper investigates land taxation from a New Zealand perspective and examines the principles of economic efficiency and equity behind three common property valuation methods for taxation. The primary question is whether using land value as the base on which to assess property tax remains the most efficient and equitable tax mechanism compared to capital value tax on improvements and annual value tax on estimated income earned from the property. The paper briefly assesses the challenges confronting valuation and the impacts that may arise from a levy of property tax in different jurisdictions that differ across certain features. The paper concludes that while issues exist in the determination of any basis of value, it is asserted however, that there is a need for considering exemption provisions to implement a land value tax in New Zealand, which has a significant potential to compromise the principle of economic efficiency.

The Historical Use of Land Value Taxation in New Zealand, 1890-1920

Dylan Hobbs (Victoria University of Wellington)

This paper is part of a larger thesis that examines the historical use of land value taxation by the New Zealand central government over the period 1890 to 1990. This paper focuses on the period from 1890 to 1920, covering the New Zealand Liberal Party's implementation and operation of the tax between 1891 and 1912. The paper also examines the changes implemented post-1912 by the conservative Reform government, driven both by differing ideology and a desire to increase tax revenue in light of the First World War. The work adopts qualitative research methods to explore how tax policy progressed and what were the relevant influences on policy direction.

The primary aim of the overall study is to examine what were the key elements of the New Zealand approach to land value taxation in the early period of its operation, how the tax policy developed and how the tax functioned. To this end the study adopts a historical institutionalist framework to analyse the influence of institutional factors, particularly the state, ideas and politics, on the policy's development in an attempt to understand how important these were. The work is primarily document-based, making use of a variety of historical sources including, government records and publications, legislation, parliamentary debate records, court records and media coverage.

Abu Tariq Jamaluddin (Universiti Utara Malaysia), 'A Legal Analysis of Transfer Pricing Law in Malaysia'

Globalisation and the rapid growth of international trade has made intercompany pricing a common consideration for the vast majority of businesses. Transfer pricing is not in itself illegal or abusive. What is illegal or abusive is transfer mispricing, also known as transfer pricing manipulation or abusive transfer pricing. Generally, related parties are required to transact on terms which might fairly be expected to have been made by independent parties engaged in the same or similar transaction at arm's length. The allocation of profits among different parts of the multinational enterprise (MNE) operating in different jurisdiction is dependent on the outcome of its transfer pricing strategy. It can decide how much tax an MNE pays and to which authorities. In an effort to curb manipulation and abuse of transfer pricing, the Government of Malaysia, like other tax jurisdictions, introduced transfer pricing guidelines and law. The first guideline on transfer pricing was published in the year 2003 by the Inland Revenue Board of Malaysia. Subsequently, in 2009, specific transfer pricing provisions were inserted to the Income Tax Act 1967. Under the new provisions, the Director General of Inland Revenue (DGIR) is empowered to substitute the price of any transactions entered into by a related person in order to reflect the arm's length price of such transaction.

The objective of the research is to study the legal issues arising from the transfer pricing law in Malaysia. It is an accepted tax principle that a tax payer is entitled to plan his affairs so as to pay less amount tax as it otherwise would be. A tax payer has always been free to mitigate his tax liability. It is pertinent that the recent transfer pricing provision is enforceable and consistent with the generally accepted tax principles. The research will also analyse the issues on the burden of proof in transfer pricing cases, the imposition of penalty in addition to additional tax payable upon transfer pricing adjustment, the rights of the payer, the determination of related parties and the documentation requirement. A qualitative case study and legal research methodologies will be adopted. Two transfer pricing adjustment cases were selected as a case study. In both cases, the transfer pricing adjustment made by the DGIR was set aside by the tax tribunal and the High Court. The study will also embark on a comparative legal research involving transfer pricing rules and regulation adopted by the Australia and United Kingdom tax authorities. The ultimate goal is to minimise manipulation and abuse of transfer pricing in related party transactions. The finding of the research would ultimately contribute to the implementation of a comprehensive transfer pricing law in Malaysia.

The Politics of Australian Superannuation

Emily Millane (Australian National University)

Australia's retirement income system is consistently ranked as one of the best in the world. Compulsory superannuation is one of the three 'pillars' of the system, and featured centrally in the reforms of the Hawke-Keating Labor Government (1983-1996). But superannuation has a much longer history in Australia, and was not an historically popular idea within the labour movement. Superannuation schemes were proposed by the conservative Lyons Government in 1938 and by the Hancock Committee of Inquiry in 1975, but these proposals were ultimately unsuccessful. It was in the late 1970s that Australia's labour movement changed its historical opposition to contributory superannuation to support such a scheme. This changed position was a deciding factor in the retirement income debate because of the close relationship between the unions and the then Labor Government. Economic conditions were also central to the adoption of universal superannuation in 1992, notably high inflation which could be managed by deferring a wage increase until retirement. Misgivings about superannuation coverage for women and those with interrupted work patterns have been raised at each juncture that superannuation was debated in Australia, and remain relevant today.

This paper presents the ongoing work of a PhD in the Crawford School of Public Policy, Australian National University.

Gender Budgeting – Governments, Civil Society and Gender Bias in Tax Policy

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Suzy Morrissey, PhD Candidate, Victoria University of Wellington, New Zealand

Australia was a leader in the development of gender budgeting and from 1984 the Women's Budget Statement was a feature of the Australian policy landscape. However, without explanation, in 2014 the Abbott government ceased the practice. The National Foundation for Australian Women, a civil society organisation that promotes gender equity in public policy stepped in, and for each of the last three years has published a gender analysis of the budget.

Gender budgeting provides a way of analysing government expenditure and fiscal policy, including tax policy, to promote gender equality. It can take many forms in practice including analysis of budget allocations, the structure of fiscal policies, expenditure tracking and monitoring systems to identify gender bias, whether explicit or implicit. It is generally understood that to ensure success such initiatives should be supported by both government and civil society.

The concept of gender budgeting is now accepted globally, gaining the support of the OECD, the United Nations, the ILO, and the IMF. Some form of gender budgeting is now undertaken in over 60 countries.

New Zealand has not introduced any gender budgeting initiatives and this paper will argue that it would greatly benefit from exploring the potential application of gender budgeting principles. Although Australia and New Zealand do not explicitly treat people differently on the basis of gender this paper suggests that elements of gender bias are present in most tax systems through issues of expert knowledge and institutional complexity, perceptions of the family as private, and the smaller number of women in parliament and senior advisory roles in policy and law making.

Given this inherent bias, tax policy is a key area for gender budgeting work. In this paper we will use the Australian experience of gender budgeting within Government and by the National Foundation for Australian Women to examine some of the opportunities for New Zealand in this area.

Contributing to the Individual Income Tax Reform Debate in China: Is Family Based Filing of Individual Income Tax Returns a Feasible Solution to the Social Problems arising from the Increasing Family Income Inequality in China?

Eva Huang and Xi Nan

China's new wave of Individual Income Tax Reform is currently hotly debated. The Finance Minister, Lou Jiwei was reported to say that the relevant government departments in China – the State Council, the Ministry of Finance, and the State Administration of Finance had worked out a reform plan together in 2015. One goal of this plan is to move China's scheduler individual income tax to a global structure, and to put in place policies that contribute to income redistribution that takes into consideration family related expenditure, such as looking after the elderly and childcare.

A review of the literature shows that Chinese scholars and commentators suggest that China could learn directly from the US, and adopt their global income tax system and allow family based filing of individual income tax returns. The literature does not provide reasons for this suggestion.

This paper performs a feasibility study to assess whether China could adopt the suggestions proposed by the prevailing literature. The study is performed based on a "revenue neutrality" analysis that compares projected revenue from existing policies, and that collectable if China allows family based individual income tax filing.

Results from a pilot study reports that the projected revenue from allowing family based individual income tax filing would be at a level that is closer to 40% of revenue collectable if China does not allow family based individual income tax filing. This result suggests that policy makers in China need to take careful considerations of costings before proceeding with the reform.

Saurabh Jain[†] **and John Prebble**[‡]

The *Swiss Swap* Case Revisited

Generally, double tax agreements are based on the OECD Model, which prevents the double taxation of passive income by reducing the tax withheld in the country of the origin of passive income, and in part by reducing tax by exemption or credit in the destination state. In order to limit the benefit of a (withholding) tax reduction, the convention requires the recipient of passive income to be its beneficial owner. In the light of the purpose of limiting treaty benefits, the term "beneficial owner" indicates that a person should own passive income in a substantive economic sense.

It is logically impossible, however, to use beneficial ownership as a test for deciding whether a company is entitled to treaty benefits. In a substantive economic sense, a company cannot be considered to be the owner of its income. For this reason, courts have adopted surrogate tests for the actual beneficial ownership test. The surrogate tests are substantive business activity and dominion.

Further, in the United States, courts have transposed the step-transaction doctrine from their domestic tax jurisdiction to certain conduit company cases for applying the beneficial ownership test to such cases. Courts in the Netherlands have also adopted an approach similar to the step-transaction doctrine.

The difference between the surrogate tests and the step-transaction doctrine is that, when using the former, courts consider beneficial ownership to be a test of ownership, whereas, when using the latter, courts regard beneficial ownership as an anti-avoidance test. However, the problem is that, when using these tests, courts tend to adopt a narrow legalistic approach.

Until 2012, in a conduit company case, courts would base their decision only on one of the tests. However, in March 2012, the Swiss Federal Administrative Tribunal used all of the tests for deciding *A A/S v Federal Tax Administration*, which is also commonly referred to as the *Swiss Swap* case. It decided the case in favour of the taxpayer, A A/S. However, on appeal, the Swiss Federal Supreme Court adopted a substance based approach and overturned the decision of the Federal Administrative Tribunal.

This paper examines the reasoning of the Swiss Federal Administrative Tribunal and questions its logic. The paper argues that, if the facts of a conduit company case are analysed from a narrow legalistic perspective, even a combination of different factors will not help to interpret a beneficial ownership clause in accordance with the object and purpose of a double tax treaty. It also involves a comparative analysis of the reasoning of the Federal Supreme Court and Federal Administrative Tribunal. It supports the reasoning of the Federal Supreme Court and argues that a substance based approach is most appropriate for interpreting beneficial ownership clauses in double tax treaties. As with courts of the United States and the Netherlands, the Swiss Federal Supreme Court used the step-transaction doctrine; however, unlike the Dutch and Swiss courts, it examined the facts and circumstances as a whole. For this reason, its approach seems logical and more appropriate for using the step-transaction doctrine for determining conduit company cases.

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Socio-political challenges to taxing multinationals: Do corporate tax cuts improve efficiency?

Ann Kayis-Kumar

Governments and policymakers are increasingly faced with the trade-off of protecting their tax revenue bases (with, inter alia, cross-border anti-avoidance rules) and keeping up with increased international tax competition (exemplified by corporate tax cuts). The latter is driven by MNEs' apparent imperative to engage in tax-minimising behaviour on the basis of the oft-cited efficiency argument.

This paper explores and expands on the literature by observing that it is arguably more efficient to implement economic rent taxation than simply reduce headline corporate income tax ('CIT') rates. In doing so, this paper bridges the gap between economic theory, practical optimisation modelling and applied legal research. Specifically, this research consists of both a legal comparative analysis featuring case studies of the Belgian and Italian ACE-variants, with a focus on the political hurdles to implementing and sustaining these reforms. This is complemented by the simulation analysis of a tax minimising multinational enterprise's (MNE's) behavioural responses to both existing and proposed tax regimes, and in particular to reductions in those regimes' CIT rates.

The results are particularly important considering the international 'race to the bottom' in tax rates coupled with the increasing budgetary pressures arising from ageing and growing populations' growing demand for publicly funded services. It is hoped that this paper provides a useful reference point for policymakers' future considerations in relation to the taxation of MNEs.

Tax Practitioners' Role in the Tax System: Some evidence from Indonesia

Ahmad Komara

Tax practitioners play a strategic role in the operation of tax systems as they can influence compliance decisions of taxpayers with considerable tax liability. Their tax knowledge and expertise enable them to help taxpayers understand and comply with the tax laws and regulations but at the same time may be used to provide unacceptable tax advice. This study examines the role of tax practitioners in shaping taxpayers' compliance in Indonesia. A combination of quantitative and qualitative methods forming a mixed-method research was employed. Data collection involved a web-based survey using self-administered questionnaire, in-depth interviews and focus group discussion. The sampling frame consists of all registered tax practitioners in Indonesia who are divided into those with three types of qualifications, namely Certificate A, B and C.

While previous studies seem to emphasise the role of tax practitioners from the theoretical perspective, this research tries to look at it from the practical point of view. For that purpose, the major roles investigated were based on a series of taxpayers' right and obligation stipulated in the prevailing tax laws where which the involvement of tax practitioners is most likely to occur. Six main taxpayers' rights and obligations specified in the Indonesian tax laws are being registered as a taxpayer, preparing tax returns, responding to tax notice, dealing with tax audit and investigation, submitting tax objection, and requesting appeal to tax court.

The survey generated 343 responses and of those only 325 were usable. It is therefore, these responses yielded a 14.2 percent response rate after considering unusable responses. While the interviews were conducted with 10 participants, a focus group discussion was organised only once. Nevertheless, the focus group discussion was attended by 14 participants with different qualifications and backgrounds. The study revealed that even though the role of majority of tax practitioners seems to be still in the early stage of the tax cycle, tax practitioners in Indonesia mostly have involved in a tax planning of their clients. Interestingly, the majority of tax practitioners view that improving taxpayers' compliance is part of their responsibility. However, regardless their qualifications most of the tax practitioners are also of the opinion that the exploitation of grey area for reducing clients' tax liability is justified. These findings seem to be contradictory with previous research which suggested that higher qualification of tax practitioners tend to support tax compliance (Erard, 1993) but in line with the 'exploiter-effect' suggested by Klepper, Mazur and Nagin (1991).

Findings of this study will contribute to the cross-country understanding on the role of tax practitioners in the tax systems especially in developing nations which is currently lacking. It is also expected that the study will produce recommendations to the Indonesian tax authority on the policy towards tax practitioners which in turn would help improving the level of taxpayers' compliance in the country.

Australia's Petroleum Resource Rent Tax 1987: Paul Keating, Peter Walsh and other game changers.

Dr Diane Kraal, Monash Business School, Monash University

Compelling insights into the Hawke Government's (1983-1991) political and consultative processes, which resulted in the Australia's *Petroleum Resource Rent Tax Assessment Act 1987 (Cth)* are the outcome of this original research into primary archival documents. The author was given access to the private papers of Dr Craig Emerson (a ministerial economic advisor in the 1980s petroleum tax reform) that allow a unique perspective into the government's policy to legislative journey via hand-written files, annotated draft reports, and personal observations. Additionally, the research has retrieved relevant files from the National Archives of Australia the concern the intense period between late 1983 and mid-1984, and reveal government petroleum tax reform discussion papers, media statements, industry responses to the proposed tax, comparative tax modelling and the records of stakeholder meetings. These 30 year old government files held by the National Archives have only just been released, at the request of the author. The dominant actors in this script on resource tax reform have been identified, along with the scenarios and roles of key persons and institutions in the progression of petroleum resource policy to the 1987 legislation.

On a more contemporary note, since 1987 the Petroleum Resource Rent Tax (PRRT) has successfully raised over A$20 billion in tax revenue, however Australia's oil production has now diminished. The PRRT tax take since the 2002-03 financial year has levelled, and the Australian Treasury's projections of PRRT revenue to 2020 are low, despite recent business investment in infrastructure of A$200 billion for integrated gas-to-LNG projects Australia-wide. The research findings indicate the PRRT was not designed for gas projects, which have less economic rent compared to oil projects. Discussed will be the contention that the community will have to wait decades for a PRRT return on its minerals from integrated gas to liquefied natural gas (LNG) projects. The theoretical and practical application of the PRRT in relation to natural gas and coal seam gas integrated extraction projects needs to be reviewed.

Family resemblance and the elasticity of tax regulation

Craig Latham

Taxation regulation uses ordinary words to create frameworks that are then applied to real world elements that exist in society. A key ability of regulation is an ability to move flexibly and coherently with societal changes that exist in the real world. Tax regulation does this through legal interpretation that is constructed via consecutive and iterative applications of the law to the real world. Given the use of ordinary words and the "open texture" of language, legal interpretation is not divorced from the way that these ordinary words function and are understood in other contexts, particularly the importance of "family resemblances" as used by Wittgenstein. Taxation law is slightly unusual though since it is a "meeting place" where a number of families intersect – accountants, lawyers, economists and the judiciary to name a few. These families use many of the words and approaches in their own disciplines in ways that may differ from their meaning in a tax context. As a result, taxation law is actually a technical language that is in many respects its own discipline and through that discipline is capable of uniting these groups in a common understanding and effectively giving rise to a new family of meaning. However, there is a danger in viewing taxation regulation as a "scientific" discipline as that would seemingly limit its existing ability to apply to shifts and jumps of language meaning in response to changes in the real world. In contrast to a scientific discipline, taxation law is not grounded in fixed real world points or processes. It is instead a framework that is applied with flexibility across points and processes in the real world. Such flexibility gives rise to the question of whether the rule of law may be breached through differences in the application of tax law across time (and circumstances) in response to changes in the real world. However, using a Cartesian framework, the rule of law requires only that tax law needs to be clear, predictable and accessible and this must necessarily only ever be *at any point in time* and cannot by its nature be so *at all points in time from any point in time*. If this were the case, it is hard to understand how law, and tax law in particular, could ever be said to or actually "develop". Further, if the law were completely unchanging and unchangeable and the real world shifted, then arguably arbitrary outcomes would almost necessarily ensue (except by chance).

Tax Risk Management and the Application of Ethics by Large Australian Companies

Dr Catriona Lavermicocca

This paper reviews tax risk management practices of large Australian companies to ascertain whether ethical considerations are an element of those practices. A company code of ethics or professional ethical principles do not appear to be applied by large Australian companies to set a standard for consideration and deliberation on acceptable tax risk. Increasingly society demands a company justify their tax contribution and this paper considers whether a 'socially responsible' company would be expected to embed an ethical position in its tax risk management system, one in which there is a requirement to act in accordance with the 'spirit of the tax law' rather than the 'letter of the tax law'. It is anticipated that a focus on compliance with the 'spirit of the tax law' by large companies in making decisions about acceptable tax risk would discourage aggressive tax decision making.

The status of transfer pricing regulations in Sub-Saharan Africa and the tax authorities' enforcement mechanisms thereof

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Sub-Saharan African countries are generally undeveloped and developing countries. The main economic centres are developing countries. Naturally, with a view to further developing and foreign direct investment and applying the benefits of the investments to the countries, most of these countries are majorly concerned with the outflow of revenues without taxation. These outflows erode the tax bases of these countries. Their attitudes have been shown by the removal or reduction in the use of distortionary tax incentives such as tax holidays. Indeed non-governmental organisations and other interested parties have voiced their concerns about the shifting of profits from developing countries to developed countries and tax havens. Various finance departments or treasuries as well as revenue authorities have made public announcements on their utter dismay at the actions of multinationals depriving these developing counties of their taxing right by undermining the tax systems.

Governments have thus embarked on curbing these forms of tax avoidance and evasion. This has seen the emergence of specific international anti-tax avoidance measures such as controlled foreign company rules, withholding taxes as well as transfer pricing and thin capitalisation rules. Transfer pricing regulations are generally nascent in Sub-saharan Africa. Most countries have recently developed the rules. Even with those where the rules are in place, some are merely legislated without guidance as to how they are to apply.

Although these developing countries are not members of the OECD, as a general matter, their transfer pricing rules and regulations follow the OECD's guidelines. It is common course that these are being further developed by the OECD's Base Erosion and Profit Shifting project. However, there are deviations and thus the OECD guidelines cannot be relied on in all cases. These include the application of transfer pricing to financing transactions in South Africa and Nigeria, as well as the landmark decision in the case of *Unilever Kenya Limited v Commissioner of Income Tax* that informs the Kenyan approach to transfer pricing. These factors create uncertainty of interpretation, application, etc. The results of the uncertainty are that the application of the transfer pricing rules is adverse to taxpayers.

In addition to this, the lack of expertise on transfer pricing principles and rules results in tax authorities applying these rules to broader transactions than should be covered by traditional transfer pricing rules, including in relation to other taxes such as value-added tax and withholding taxes. In their application, the tax authorities oftentimes raise excessive assessments thereby placing the rebuttal burden.

This paper analyses these technical deviations and the implications of the deviations from the OECD rules as well as the challenges resulting from the interpretations thereof. The paper also analyses the powers and approaches adopted by the tax authorities. It also shares the experiences of taxpayers in resolving transfer pricing disputes with the tax authorities and efforts by the African Tax Authorities Forum towards effective tax administration on transfer pricing.

What does it mean to be 'tax literate'? What should 'society' know about tax if the UK is to establish a lasting tax consensus post-Brexit?

David Massey,* Phyllis Alexander, Merima Balavac****

Before the United Kingdom joined the European Economic Community (EEC) in 1973, there was a robust and well-informed debate on the principles and practice that should underpin the new value added tax (VAT), and of the purposes, strengths and weakness of the taxes that it was to replace.

In contrast, recent public discussions on taxation have often consisted of a pooling of ignorance by press, politicians and NGOs, while traditional tax experts have found difficulty communicating their that expertise to a lay audience.

In June 2016, the UK voted in a referendum to leave the European Union, an option popularly known as "Brexit". The Brexit process will require a review of those taxes which currently have their basis in European Council Directives and the like. But it also represents a once-in-a-generation opportunity to examine collectively the whole tax system and to make any reforms as part of a coherent package across that system.

What level of tax literacy do we require to ensure that everyone can engage meaningfully in the debate and to understand the trade-offs that will be required in any reform? What should that tax literacy consist of? What are the essential elements from the canon of knowledge established by tax professionals? And what are the areas that have been ignored in the past, but which the newer tax commentators have correctly identified as important?

The paper examines three recent tax controversies in the UK – Starbucks' corporation tax; VAT on women's sanitary protection; and the Brexit referendum – to identify areas where basic understanding has enabled the discussion, or where tax illiteracy has hindered the debate.

It has been noted[5] in Australia that there has been little research which has "considered to what extent the general population understands the tax system that applies to them." There appears to have been even less in the UK, and those of us researching this need to learn from, and quickly catch up with, Australasian researchers.

This paper also reports the preliminary findings of the first stage of a study of tax literacy of young people in England.[6] It seeks suggestions from ATTA members as to how our research (and the tax literacy if our youth) might be improved. It also offers some provisional conclusions as to where the UK experience might be expected to support the results and recommendations of Australasian researchers, and to identify those areas where factors influencing tax literacy may depend on the culture of the society in which those taxes are imposed.

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[5] T Chardon, B Freudenberg and M Brimble, "Tax literacy in Australia: not knowing your deduction from your offset", (2016) 31 *Australian Tax Forum*,321 at p323

[6] This research is funded by a grant from the UK's Chartered Institute of Taxation.

The economic development of Northern Australia: a critical review of the taxation benefits and incentives both past and present and the potential taxation options for the future.

John McLaren

In 2015 the Commonwealth Government produced a White Paper on the need to realise the full potential of Northern Australia and for that region to become an economic powerhouse within Australia. The White Paper explicitly states that the Government is not declaring the North a Special Economic Zone (SEZ) where tax concessions are provided to businesses to reside and operate in the region. This paper will examine the current government's approach to developing the North and in particular the approach to attracting economic activity and foreign investment. This paper will focus on the current tax benefits for those living and working in the north such as zone rebates and in particular what more can be done by both the Commonwealth and State and Territory governments to encourage economic activity. The paper will also examine the tax concessions that existed in the past such as a lower company tax rate pursuant to the now repealed s 23(m) of the Income Tax Assessment Act 1936 (Cth) for companies resident in the Northern Territory prior to 1947 and the Darwin Trade Development Zone that was abolished in 2003. The paper will then assess the merits of offering tax benefits in the form of tax credits for businesses operating in the North and greater tax deductions. Finally the paper will explore the merits of a SEZ for the North as well as tax benefits that could be offered by the State of Queensland and the Northern Territory. The paper will conclude with recommendations for a range of tax benefits that could be offered to businesses and individuals otherwise the North may fail to fulfill its true potential.

Taxation Education in Secondary Schools – What Are Students Actually Being Taught?

Annette Morgan, Lecturer Department of Taxation, Curtin Law School, Curtin University

There is currently a strong push in all OECD countries to improve financial literacy in schools and teach children the importance of being financially responsible when they enter the workforce. In Australia, programmes are being discussed and implemented by a number of authorities to achieve this outcome including a change to the official education programme through The Australian Curriculum, Assessment and Reporting Authority **(**ACARA**)** but on review of the official changes there is little evidence of a major introduction of taxation education to students as part of these programmes.

Taxpayer behaviour is also of concern to many revenue authorities around the world including Australia and many studies have shown that taxpayer's compliance can be affected by many factors including education. The literature shows that educating taxpayers about the social and financial impacts of a taxation system can improve their willingness to comply with their countries taxation policies. Taxation education introduced in early years of secondary schooling could also help to create taxpayers who understand their responsible when it comes to their countries taxation systems.

The author conducted a study to evaluate the past experiences of undergraduate student at Curtin University studying Taxation in the area of the types of taxation education they were provided with in their secondary schooling. The study also asked the undergraduates what in their view were the most important areas of financial literacy and what should be taught to students whilst they are in secondary school. They expressed the view that had they been taught about taxation whilst at school it would have better prepared them for when they did become taxpayers.

The purpose of this paper is to discuss the results of the survey and provide some preliminary insights to what the current state of play is in secondary schools with relation to providing taxation education to students and to consider how taxation is rated amongst the other components of financial literacy.

It is of extreme importance that a subject dealing with taxation is included in any new school curriculum that may be introduced as taxation will be a major facet of everyday life when these children become taxpayers. Taxation forms a large part of financial literacy, as it is only after taxpayers have paid their taxation liability that they can spend what is left.

Paris Agreement review find New Zealand and Australia's policy measures to be "inadequate": transport sector.

Anna Mortimore and Lisa Marriott

The 2015 Paris climate agreement, whose central aim is to restrict global temperature rises to well below 2C above industrial levels, will enter into force on 4 November 2016. The required minimum number of 55 signatories to the convention, (accounting for in total an estimated 55% of total global greenhouse gas emissions) deposited their instruments of ratification or approval with the Secretary –General of the United Nations. Ratification imposes international obligations upon signatory countries to introduce climate policy and meet carbon emission reduction targets.

Australia is expected to ratify the Paris Agreement to reduce emissions by 26 to 28% of 2005 levels by 2030, known as the country's Intended Nationally Determined Contribution (INDC). While New Zealand ratified the Paris Agreement on 5 October 2016, adopting an emission reduction target (or INDC) of 30% below 2005 levels by 2030.

United Nations "Climate Action Tracker" found that both Australia and New Zealand's climate policies and targets as "inadequate" and if most countries followed both country's approach, "global warming would exceed 3-4C." Moreover "Australia stands out as having the largest relative gap between current policy projections for 2030 and the INDC target." Australia and New Zealand climate policies fell "short" of emissions reductions required to meet the 2030 target put forward in the INDC and are unlikely to meet without "substantially more policies."

The challenge for New Zealand to meet its reduction targets is its increase in emissions of 25% in the energy sector mainly due to the transport sector growth (58% growth between 1990 and 2012) and fossil fuel electricity generation, while emissions from the agricultural sector grew by 15%. The reliance on the Emission Trading Scheme to reduce greenhouse gas emissions (which came into force in 2008) was found to be weak. Australia is relying on the National Energy Production Plan to improve energy productivity and vehicle fuel efficiency, which have not yet been introduced. Until such measures are introduced the "Climate Action Tracker" projects significant increase in transport sector emissions.

The paper will compare and contrast New Zealand and Australia's road vehicle fleet and that the rising CO2 emissions in both country's (brought to the attention of the United Nations) is attributable to the failure to introduce effective climate policy measures and targets.

Corporate Tax Aggressiveness in the Financial Crisis Environment

Jonathan Nguyen (UNSW),

Corporate taxation is an integral part of any country's tax regime. Studies of corporate tax aggressiveness can assist policy makers and tax authorities in addressing companies' illegal tax schemes and taxing businesses more equitably in the sense that every entity pays their fair share of taxes. Following this theme, my research contributes to the existing body of literature in corporate taxation by studying tax aggressive activities by companies in the context of a financial crisis environment where companies are exposed to various business risks.

My study reviews corporate tax avoidance proxies employed by researchers up to date and proposes to construct an index measure of corporate tax aggressiveness based on the currently available proxies using principal component analysis. Furthermore, my research also explores the potential to use dividend franking level as a proxy for company's tax aggressive planning under a dividend imputation tax system such as Australia. Specifically, my study documents strong evidence of a positive and statistically significant association between effective tax rate ('ETR') – the most commonly used tax avoidance proxy – and franking level of dividends paid by Australian companies, on both annual basis and long-run basis (i.e. over a five-year period).

My research proceeds to examine tax aggressive strategies by companies operating in a financial crisis environment as opposed to operating during a non-crisis time using the index measure of tax aggressiveness constructed in the first chapter of my study. The analysis is to be carried out for two countries, Australia and the United States. It is believed that during an economic crisis, more firms encounter cash flow problems, experience financial distresses and subsequently become bankrupt. My study is therefore concerned with examining the relationship between corporate failure and tax aggressiveness in an economic crisis environment. Regression analysis is conducted to test this relationship under normal economic conditions as well as under impacts of a crisis such as the global financial crisis or the European sovereign debt crisis. My research also performs a comparative analysis to understand if there are any differences between Australia and the United States in respect of the relation between tax avoidance and corporate failure, especially when this relationship is placed under an economic downturn.

Title: Family and employment tax credits and effective marginal tax rates

Author: Dr Patrick Nolan, Principal Advisor, New Zealand Productivity Commission

Family and employment tax credits play important roles in many countries' tax systems. Indeed, these programmes have been justified with goals as diverse as reducing child poverty, improving financial incentives for labour supply (for second earners and among workless households), ensuring horizontal equity between families with and without children, and supporting single income partnered families. To provide a picture of the international direction of reform this paper updates earlier work (Nolan, 2006)[1] comparing the designs of family and employment tax credits in Australia, New Zealand, Canada, the United Kingdom and the United States. Further, because the outcomes of earned and child tax credits reflect their interactions with other policy instruments as well as their design, this paper also outlines a method for calculating effective marginal tax rates (the combined effect of income tax and withdrawal of assistance), and illustrates its application to New Zealand and the United Kingdom. The paper then concludes with an outline of the general strengths and weaknesses of tax credits in pursuing policy goals relative to changes to the personal tax scale, main welfare benefits and minimum wages.

[1] Nolan, P. (2006). Tax relief for breadwinners or caregivers? The designs of earned and child tax credits in five Anglo-American countries. *Journal of Comparative Policy Analysis*, 8:2, 167-183

[1] Nolan, P. (2006). Tax relief for breadwinners or caregivers? The designs of earned and child tax credits in five Anglo-American countries. *Journal of Comparative Policy Analysis*, 8:2, 167-183

Tax Policy for Good Times and Bad: An assessment of tax policy responses to natural disasters

Carolyn Palmer

Recent years have seen a series of natural disasters place significant social and fiscal strain on a number of economies. Determining the appropriate tax response to natural disasters involves multiple complex policy decisions, which often need to be made under significant time pressure with limited information. While natural disasters are predicted to become more frequent and costly, there has been little focus on the links between tax policy development and responses to natural disasters.

This paper compares the tax responses in the pre-disaster, disaster response, and post-disaster recovery stages of the 2010-11 Queensland floods in Australia and the 2010-11 Canterbury earthquakes in New Zealand. It was expected that jurisdictions with a stronger tax policy system, as measured by OECD, World Bank and other expert reviews, would have tax responses to natural disasters which are more aligned with the standard economic principles of good tax policy. This expected result is compared to findings from case studies on the Canterbury earthquakes and Queensland floods, involving analysis of 41 semi-structured interviews with tax policy makers (government officials, tax practitioners and tax academics) from Australia and New Zealand. A large number of legislative documents, policy reports, formal reports, technical guidance, submissions, academic literature and media items prepared by these types of policy makers were also analysed. Three rival explanations for the types of tax responses made (risk of natural disasters, macro- and microeconomic settings, and government arrangements for responding to natural disasters) are investigated. The paper concludes that empirically based patterns from case studies on the Canterbury earthquakes and Queensland floods suggest that not only do countries with stronger existing tax policy systems have tax responses to natural disasters which are more aligned with the standard economic principles of good tax policy, but that any weaknesses within these systems will also be reflected in the tax responses made.

A brief thematic history of income tax in Australia

John Passant

In this paper I adopt a thematic approach to the history of income tax in Australia. The themes I look at include indigenocide (the genocide of indigenous peoples), settler colonialism, imperialism, social democracy, war and economic crises.

In essence the thematic history of income tax in Australia is the history of capitalism from the early years of the colony in 1788 to today. However the historical process itself has been subverted. As Marilyn Lake puts it: '… the rewriting of Australian history has required forgetting as well as remembering.'[7]

Remembering that forgetting is what this paper is about – remembering the genocide, remembering the military expansionism and adventurism that drove the need for revenue and that, coupled with Australia's participation in two world wars in the 20th century, has produced both an income tax and a centralised income tax system that remain the main revenue foundation of the state in Australia. Income tax and the system of smoke and mirrors it sustains help us forget.

There is, as John Hinkson says, and echoing John Gray, 'a cultural blindness at the heart of the colonial settler experience.'[8] Hinkson calls it cultural blindness but it goes much further than that in my view. It is a totalising blindness born of specific universalism and expressed by some as the superiority of Western capitalist society, especially its alleged superiority over the indigenous societies they were expanding into and invading. In this the blindness reflects the duality of appearance and reality Marx highlighted in analysing capitalism.[9] We see the land with our homes, 'our' roads, and 'our' workplaces on it. We do not see the original inhabitants. We see the wages, profit, rent, dividends and interest arising from the economic structures built on that stolen land, structures which extract surplus labour. We do not see the stolen land, nor the unpaid labour, that are the main arteries to the heart of that system of exploitation. We see the tax 'we' pay on our wages, and often the tax 'they' do not pay on 'their' profits, without seeing the stolen land or the contractually free but actually stolen labour that are the foundations of that tax.

In this paper I l also look at some sub-themes or key events, often national crises, in Australian capitalism, to help understand tax as the thunder of our history[10] and as the agent of forgetting. These include the formation of the Labor Party, Federation, World War I and II and the 1890s Depression, the 1930s Depression, the end of the post-war boom and the beginning of the age of neoliberalism,[11] and the Great Recession[12] today. Income tax is intertwined into and a key part of the story of Australian capitalism and its social reproduction in Australia.

Let the remembering begin.

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[7]Marilyn Lake, 'Introduction: What have you done for your country?' in Marilyn Lake and Henry Reynolds, (eds) *What's Wrong with ANZAC? : The Militarisation of Australian History* (Sydney, University of New South Wales Press, 2010) 22.

[8] John Hinkson, 'Why settler colonialism?' (2012) 37/38 *Arena Journal* 1, 10.

[9]For a discussion of the concepts of appearance and reality see John Passant, 'Cleaning the Muck of Ages from the Windows into the Soul of Tax' (2016) 5 *British Journal of American Legal Studies* 177 at 201-204.

[10] Joseph Schumpeter, 'The Crisis of the Tax State', in Richard Swedberg (ed), *The Economics and Sociology of Capitalism* (Princeton University Press, 1991) 99, 101.

[11] For a discussion of neoliberalism and tax, see John Passant, 'Neoliberalism and the Henry Tax Review' (2013) 8(1) *Journal of the Australasian Tax Teachers Association* 117, especially 124-130.

[12] Andrew Kliman, *The Failure of Capitalist Production: Underlying Causes of the Great Recession* (Pluto Press, London 2012); Michael Roberts, *The Great Recession: Profit cycles, economic crisis - A Marxist view* (Michael Roberts, 2009). Roberts now calls it the Great Depression.

Thin capitalisation: a new model for calculating debt percentage?

Alison Pavlovich

In the wake of the GFC, Governments around the world are feeling the pressure of growing social needs in the community. At the same time, the tax base has reduced due to the decline in profitability of enterprise and reduced employment. These pressures have highlighted the lack of contribution being made by many (or most) multinational corporates to the tax base in the communities in which they operate and rely upon for their own success.

This lack of corporate contribution has led to increased Government, media and societal attention on the mechanisms employed by multinational corporate groups to reduce their tax contribution. One of these mechanisms involves shifting the debt burden from low tax jurisdictions to high tax jurisdictions in order to maximise the group's tax deductions on interest payments – or even creating tax deductions for interest payments made only intra-group. Governments will often apply limits on the tax deductions available to multinational enterprises - known as thin capitalisation rules.

In many jurisdictions, limits are put on interest deductions based on a maximum acceptable debt to asset ratio or a ratio of interest deductions to earnings. The ratios are often calculated using the classification and valuation of assets, debts or earnings measured in accordance with International Financial Reporting Standards ("IFRS"). New Zealand applies a test based on the debt to asset ratio using the measurement bases available under the New Zealand Equivalents of IFRS ("NZ IFRS").

An issue arises with the use of IFRS – it is notoriously malleable. IFRS is principle-based rather than strictly codified. It allows for professional judgment to be employed in the decisions whether to recognise and how to value an entity's assets and debts.

This article investigates how NZ IFRS applies to the valuation of assets and debt, considering how measurement choices can impact upon the ratio calculation for the purpose of applying the thin capitalisation rules. The article considers whether the thin capitalisation rules should be based upon an alternative measurement for calculating assets and debts – the tax base measurement. Using the tax base measurement for assets and debts may help to reduce the inconsistency and manipulation of these ratio calculations and the resulting potential tax base erosion.

Tax administration reform and the society in Indonesia: some lessons learnt

Kristian Agung Prasetyo, Curtin Law School, Curtin University

This paper analyses the tax administration reform project in Indonesia initiated by the IMF in 2000s, during the time when the Indonesian tax office was seen as one of the most corrupt government offices in Indonesia. Regarded as a success, partly because of its corruption-free ecosystem and revenue performance, the core principles from that project were subsequently applied nationally. So far, unfortunately, this adoption does not seem to deliver the results as promising as seen in the initial project. The purpose of this paper is therefore to shed light on the process taking place during that project. For this purpose, in-depth interviews were conducted with participants who directly were involved and held various roles in that pilot project reform. Several themes emerge from the interviews. The main theme is the reform spirit, under which other themes, such as, among other things, superior-subordinate relationship, religious belief, quality working environment, and superior's support. These themes, in general, highlight the importance of leadership and contribute to improve the working environment and, at the same time, foster innovation and teamwork. In this case, the IMF has a role of a catalyst provide safeguards and to smoothen the reform process. However, without a commitment to change of the key actors, represented by the main theme, that project may not be as successful. Other key message of this paper is that it is possible to bring into being a relatively corruption-free ecosystem in an otherwise corrupt society.

This paper provides a practical suggestion that for a reform to succeed, there must be a strong commitment to change. External intervention, such as from international donors, merely acts as a supporting element. Further, this research sheds light and documents the organisational process taking place during that tax administration pilot project, and hence, fills a gap left by existing research that mainly focus on reform outcome such as ethics implementation or revenue performance.

Investigating Income Tax Compliance Risks of Large Businesses in Indonesia

Mochammad Hadi Pratomo (RMIT)

Large business compliance is a significant issue in tax research, yet studies relating to the situation of developing countries is rarely presented in the literature. Different scholars have focused on tax policy, tax reform and tax administration improvement, either viewed from the macro level or from personal taxes lenses, and leave the large corporation compliance mostly untapped. For example, Bird (1992, 2004, 2008) mainly emphasised the role of tax administration and tax policy. Stiglitz (2005) highlighted the tax reform from the scope of macroeconomics.

In this paper, I would like to report on a research of large business compliance in a developing nation, Indonesia. As stated by Baurer (2005), Brautigram et al. (2008), McKerchar and Evans (2009), compared to the developed ones, there are more challenges for tax authority in emerging countries to improve their taxpayers' compliance. Based on this ground, this study explores the tax non-compliance behaviour of large companies. This project collected perspectives from 48 participants through semi-structured interviews of three inter-related parties that are representing tax function; tax official, tax advisor and tax manager.

Thematic analysis is used to analyse the interview results as this method provides flexibility to elicit a deeper insight. As such, I offer a new lens for understanding large business compliance in a developing country. The use of interviews as an instrument for collecting data particularly from the tax authority's perspective is one contribution of this research.

The primary contribution of this research to the literature of tax studies is a portray of large business compliance in a developing country in which rarely available. This portray provides a detailed picture of non-compliance factors of large corporation in Indonesia. Responsive regulation theory is employed as a subsequent mechanism for the tax administration to manage the situation after the complete picture of large business' compliance has been identified. This paper informed some preliminary findings that conforms previous studies such as the uncertainty of tax laws and tax morale of taxpayers are the major issues, e.g. Franzoni, (1998), James and Alley (2002), Sandmo (2004), Freedman (2010). Another finding is the tax collection target arrangement may potentially impede tax officer's professionalism and this occurred in China as well (Brondolo and Zhang, 2016). Importantly, the findings presented in this paper illuminates recent condition of large business compliance in a developing country.

One more thought on the issue of tax compliance cost burden for large enterprises in New Zealand: application of rational choice model to tax compliance administration

Nikolay Shekhovtsev (University of Canterbury)

Tax compliance burden represents additional costs incurred by business when complying with tax obligations, imposed by tax revenue authority. Given the regressive nature of tax compliance costs the majority of studies has traditionally focused on SMEs and largely ignored large enterprises as the object of their analysis. As the result, there are very few studies that consider the issue of tax compliance costs among large enterprises and even fewer of them chose to look at the situation with large enterprises in New Zealand. Another important aspect regarding the previous literature on tax compliance costs burden of large enterprises is the fact that tax compliance costs are seen as "exogenously" determined in previous studies and, therefore the magnitude of tax compliance burden has been considered to depend only on the complexity of tax code. In fact, being one type of operating expenses, tax compliance costs can also be reduced through the optimal tax compliance costs administration and thus it is more appropriate to view them as "endogenous" costs.

This paper presents an analysis of optimal tax compliance cost administration employing the rational choice model. The purpose of the model is to demonstrate what the optimal mix of resources that large enterprises use in order to comply with tax obligations should be, so that the burden from tax compliance costs would be minimal. Though the model is not empirically tested in this paper, it nonetheless offers some valuable insights into the tax compliance costs minimization administration that "rationally behaving" large enterprise would be expected to adopt.

Immigration and Retirement Income Policies: How Well Does New Zealand Treat Its Migrants?

Andrew M C Smith, School of Accounting & Commercial Law, Victoria University of Wellington, andrew.smith@vuw.ac.nz

New Zealand is a country which has seen substantial inward and outwards migration over the last two decades. An important issue arising from migration is how retirement income will be provided for migrants when their working lives have been split between two or more countries. The issue is complicated as pension rights and funding are usually accrued over an individual's working life and that every country has adopted different retirement income schemes using on various proportions of public and private funding to provide adequate retirement income.

New Zealand is relatively unusual in that its primary form of retirement income support is a universal age pension (called "New Zealand Superannuation") provided from the age of 65 funded from general taxation. Private superannuation schemes (whether employer subsidised or not) are supplementary to the publicly funded age pension and enjoy relatively minor tax concessions.

The objective of this research is to examine who well New Zealand's retirement income policies treat immigrants to and emigrants from this country. In regard of New Zealand Superannuation, immigrants to New Zealand may face considerable disadvantage if they have certain types of foreign pensions which they bring to this country. Emigrants from New Zealand may be better off in that they might be able to enjoy payments of New Zealand Superannuation offshore without suffering any disadvantage if they have offshore pension interests.

If a migrant retires in New Zealand and has interests in offshore private pension schemes they often disadvantaged from a tax perspective. Australian superannuation accounts, however, may enjoy a more favourable tax treatment that New Zealand based superannuation schemes leaving an uneven playing field for migrants depending upon where they have originated from.

In essence New Zealand does not offer a consistent treatment for migrants in respect of any offshore pension or superannuation interests. Given the increasing proportion of its population that are migrants to New Zealand there is a strong case for New Zealand to reconsider how migrants are treated under its retirement income policies to provide a more consistent and equitable treatment of its migrants.

Tax and Society: Does The Tax Advice Industry Perform A Positive Role?

Dr Steven Stern, Adjunct Professor, College of Law & Justice, Victoria University[13]

Considerable resources seem to be deployed around the world in the private corporate sectors to ensure that potential taxpayers with sizable contingent tax liabilities are able to minimise or even eliminate their payments of tax. The resources deployed in this industry could substantially exceed the resources that governments deploy to enforce their taxation laws.

Does the tax advice industry have any positive impacts upon society? If so, how can the positive effects become reinforced? What are its negative effects on society? Do the negative effects outweigh any positive results that the tax advice industry may produce? How can any negative effects be identified for elimination or minimization?

In turn, there is the issue of whether the tax advice industry should attract privilege; and, if so, the extent and nature of any such privilege?

This paper will seek to answer these questions and to identify the different manifestations of tax advice industry in the private corporate sectors. It will examine whether any useful results can arise from demarcating distinctions between tax evasion, tax avoidance and tax minimization, and the extent to which there should be a concept of legitimate financial planning which utilizes tax benefits. For example, Parliament in Australia has often deployed tax benefits as a means of implementing the Government's fiscal policies.

Reducing reliance on the aged pension is an illustration. However, the Australian Taxation Office recently issued a taxpayer alert indicating it is reviewing arrangements where individuals are said to be diverting their personal services income to a Self-Managed Superannuation Fund purportedly in order to minimize or avoid tax. The ATO alerts taxpayers of its concerns that SMSF members at or approaching retirement age are performing services for clients and then referring remuneration often at reduced rates for those services to a company, trust or other non-individual entity. This entity is then said by the ATO to be distributing the resultant income to an SMSF, of which the individual service provider is a member, as a return on investment. Income received by the SMSF is taxed at a concessional rate or is treated altogether as exempt; i.e. an exempt current pension income of an SMSF in the pension phase.

There also is the issue that different ways of implementing commercial objectives can have different tax effects on various parties; e.g. borrowing funds to purchase an asset or leasing it. Results of this nature raise the consideration of why should the implementation of a transaction so as to produce a specific tax effect not be regarded as a positive outcome for which the tax advice industry might be commended?

Does the answer lay in that it is not problematic for the beneficial financial consequences of a transaction to include extending to taxation benefits; but, rather, what is problematic is where the principal effect or purpose of the transaction is achievement of reduced, minimal or no tax, and that the nature and extent of privilege that may be afforded to the tax advice industry should reflect such an analysis. However, is such a "solution" more theoretical which might be difficult to apply practically in the full range of diversity in commercial life?

[13] BEc LLB (Mon); LLM PhD (Melb); CTA; Barrister-at-Law, List S Gordon & Jackson, Victorian Bar; Registered Tax Agent; Registered Trade Mark Attorney

The Application of a General Anti-Avoidance Rule (GAAR) in Tackling Aggressive Tax Planning: Lessons from Australia

Niken Evi Suryani (Monash University)

A number of studies have explored aggressive tax planning practices in developed countries. However, fewer studies have examined aggressive tax planning in developing countries, such as Indonesia. The majority of the latter studies have concluded that the Specific Anti-Avoidance Rules (SAARs) in Indonesia have been inadequate in dealing with unacceptable tax avoidance and have recommended that a General Anti-Avoidance Rule (GAAR) should be introduced to complement the SAARs.

GAARs are becoming a part of many tax systems throughout the world and often serve as the last resort in tackling aggressive tax planning in many jurisdictions. The main elements of a GAAR revolve around defining a scheme, the tax benefit obtained and the taxpayer's purpose in the transaction. The potential application of a GAAR can vary accordingly.

In Indonesia, more aggressive tax planning cases are won by taxpayers than the tax authority. Consequently, an examination of whether a GAAR per se would have resulted in a different outcome is worthy of exploration. This paper conducts that exploration and aims to identify and analyse aggressive tax planning schemes in Indonesian Tax Court decisions. The paper specifically looks at the possible application of a GAAR by utilising the Australian GAAR as a proxy to identify whether results may have been different. Despite the difference in both common law and civil law jurisdictions, the Australian GAAR was selected as being one of the more established GAARs in operation. The lessons learnt will be beneficial as a reference for the potential design and application of a future Indonesian GAAR.

Gamifying the tax system: International tax teaching with the PlayTax simulation

Professor John Taylor, Ann Kayis-Kumar, Kathrin Bain

Understanding international tax can be challenging for students at both undergraduate and postgraduate levels. PlayTax* is a novel educational application which provides a unique learning platform for students to explore and interact with sophisticated international business taxation concepts and decisions. Launched in 2016 in the course International Business Taxation (TABL2756/TABL5583), the conceptualisation and modelling underlying PlayTax commenced in 2015. By applying a novel multi-purpose mathematical model, PlayTax presents an interactive simulation of how a hypothetical multinational enterprise ('MNE') structures its internal affairs in a tax-minimising manner.

Based on the highly-successful educational platform Playconomics, the three-fold foci of PlayTax are: internationalisation; research integration; and digital innovation. PlayTax provides an applied learning experience for students, who are made responsible for determining international business decisions. These decisions enable students to establish operations across multiple jurisdictions, make capital funding decisions, and determine their product pricing strategy – including the possibility of developing an e-commerce presence. Importantly, international tax rules overlay these business decisions, and act as decision-making parameters. This encourages students to explore various degrees of MNE tax-aggressiveness – and potentially to become the subject of a tax audit. Issues relating to global tax transparency, which have recently been earmarked by the OECD, are highlighted through this unique learning platform.

As such, PlayTax synthesises theory and practice through a technology-enhanced learning platform. In addition to the e-book built into PlayTax, which constitutes the most up-to-date 'textbook' available for this course, it also utilises Moodle forums to further encourage student engagement, which is supplemented by in-class discussion to develop a distinctive, challenging and applied experiential learning framework.

By integrating course content with a problem-solving narrative, PlayTax provides a unique learning platform which encourages playful exploration of sophisticated concepts to boost student engagement and improve academic performance.

* PlayTax was developed in collaboration with LionsHeart Studios Pty Ltd.

Base Erosion and Profit Shifting by Intra-group Debt – A Case Study of Chevron

Dr Antony Ting

It is well known that many multinational enterprises ("MNEs") use intra-group debts for tax avoidance purposes. The popularity of this tax avoidance tool can be attributed to its simplicity, as described in the Final Report of Action 4 of the Base Erosion and Profit Shifting ("BEPS") Project ("Final Report"):[14]

> The use of third party and related party interest is perhaps one of the most simple of the profit-shifting techniques available in international tax planning. The fluidity and fungibility of money makes it a relatively simple exercise to adjust the mix of debt and equity in a controlled entity.

Intra-group debts are particularly simple to use, as they do not involve third parties and "can be created with the wave of a pen or keystroke".[15] They often do not require any movement of assets, functions or personnel within a corporate group, nor any change of its operations. Furthermore, intra-group debts are artificial and provide significant flexibility for manipulations. It is therefore not surprising that the OECD describes the BEPS risks arising from intra-group debt as the "main tax policy concerns surrounding interest deductions".[16]

The aim of this article is twofold. First, it uses *Chevron*,[17] a recent major tax case in Australia, as a case study to highlight the key issues arising from intra-group debts. Second, this article analyses and evaluates whether the OECD's best practice approach recommended in the Final Report is effective to address tax avoidance structures using intra-group debts as illustrated in the *Chevron* case.

[14] OECD, *OECD/G20 Base Erosion and Profit Shifting Project – Limiting Base Erosion Involving Interest Deductions and Other Financial Payments – Action 4: 2015 Final Report* ("Final Report"), p.15.
[15] Chloe Burnett, "Interest Deductions and Multinational Enterprises: Goldilocks and the Brave New World" (2015) *Bulletin for International Taxation*, June/July, 326, at 326.
[16] OECD, *Public Discussion Draft – BEPS Action 4: Interest Deductions and Other Financial Payments* ("Discussion Draft") (available at http://www.oecd.org/tax/aggressive/discussion-draft-action-4-interest-deductions.htm), paragraph 3.
[17] *Chevron Australia Holdings Pty Ltd v Commissioner of Taxation* (No.4) [2015] FCA 1092.

Effective access to independent tax dispute resolution in Australia: The tax adviser's perspective

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This article represents part of an ongoing ARC funded research project on access to tax justice in tax dispute resolution in Australia. Despite its importance in promoting trust, cooperation and voluntary compliance in the tax system, independent tax dispute resolution represents perhaps the least studied aspect of the operation of the tax system in Australia. In our research we distinguish between formal and effective access to independent tax dispute resolution. While the mechanism for independent tax dispute resolution is formally available, the same cannot always be said about its effective accessibility. Since ineffective access to independent tax dispute resolution can potentially give rise to negative consequences for the tax system, it is worth investigating this further.

In our research, we adopt a multi-perspective approach that seeks to examine the issue under study from the perspectives the taxpayers, tax administrators, tax advisers and tribunal members/judges. The present article focuses on the effective accessibility of independent tax dispute resolution in Australia from the perspective of tax advisers. To this end we adopt a primarily qualitative approach that involves a series of in-depth semi-structured interviews of 15 tax advisers. Participants in the interviews are accountants/lawyers who have had experience in tax dispute resolution, representing taxpayers or the Tax Commissioner or both. To avoid locational bias, they are chosen from different major capital cities in Australia including Sydney, Melbourne, Brisbane and Adelaide. The interviews will take place during September to November 2016. In the interviews we will be seeking participants' views and perceptions on a wide range of issues such as their practices concerning chargeable hours, frequency and trend of tax disputes between taxpayers and the Australian Taxation Office, the effectiveness of alternative dispute resolution, the Administrative Appeals Tribunal and the courts in resolving tax disputes, the costs of tax dispute resolution to the taxpayers, the effective accessibility of independent tax dispute resolution, the justice perspective of self-representation in tax disputes, and whether taxpayers with relatively more resources are likely to gain a better outcome than taxpayers with relatively fewer resources. In addition, we will also be seeking practical recommendations (from participants) to improve the mechanism of tax dispute resolution in Australia.

A Tax or a Fine? The Development and Relevance of Tobacco Taxation

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"We have all heard that it is wrong to marry for money, but quite praiseworthy to marry where money happens to be. So taxation for other than revenue objects, to punish or discourage, taken by itself might sometimes be indefensible. It should be called what it is, a fine or penalty, and not a tax."[18]

Within decades of the introduction of tobacco in England, King James I issued one of the earliest anti-smoking missives, his *Counterblaste to Tobacco*,[19] which he followed with a forty-fold increase in the custom on tobacco. History repeats; Four centuries later the New Zealand Government adopted the goal of making New Zealand essentially a smoke-free nation by 2025.[20] A series of annual increases in tobacco taxation to discourage smoking is a key component of this policy.

Like alcohol and sugar, taxes on tobacco have long provided a ready stream of revenue for governments. However, the negative effects of consumption of these products have provided a separate justification for their taxation.

This contribution to taxation history provides a diachronic review of the development of tobacco taxation by addressing the question of how tobacco has been taxed in New Zealand since its establishment as a Colony in 1840, and how this taxation has been justified. It considers justifications for the taxation of consumption, and reviews a range of archival resources, including legislation and related commentary, to determine how the tax was justified and how this has changed over time.

This research provides a context in which to discuss the contentious issue of what constitutes a tax, why a tax may be levied, and whether a tax imposed in pursuit of a specific policy goal has a legitimate place in a tax system formally committed to neutrality. It also has contemporary relevance at a time when similar taxes are proposed to address obesity.

[18] Stamp, J. (1921). *The Fundamental Principles of taxation in the Light of Modern Developments (The Newmarch Lectures for 1919)*. London: Macmillan, p. 170.
[19] James I, (1904) *A Counterblaste to Tobacco*, available at: https://www.laits.utexas.edu/poltheory/james/blaste/blaste.html.
[20] Ministry of Health (2015), *Smokefree 2025*, available at: http://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/smokefree-2025.

An Analysis of Indonesia's Tax Case to Determine Transfer Pricing Disputes

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Governments around the world are concerned about the potential loss of tax revenue from large multinational enterprises (MNEs), conservatively estimated to be approximately US $ 100 to 240 billion annually. One of the causes of this potential tax deficiency are the tax minimisation strategies employed by MNEs through aggressive transfer pricing schemes. Despite the fact that there is an international tax regime established by the League of Nations in the 1920s to avoid double taxation and to prevent tax avoidance, aggressive transfer pricing still exists. The transfer pricing regime was established by developed economies but is used in developing countries. Currently, there is debate among academic scholars as to whether the traditional transfer pricing regime is suitable for developing countries. This study argues that there are four primary reasons for the development of a specific transfer pricing regime for developing nations. The first reason is the distinguishing characteristic of MNEs operating in developing countries, for example, the unique business operations of MNEs and the unique ownership of MNEs. Second, developing countries often find it difficult to obtain comparative data to determine an arm's length price. Third, complexity of the tax administration of transfer pricing hinders developing countries. Fourth, there is often a lack of transfer pricing experts within the developing countries.

The objective of this study is to provide a policy proposal to reform transfer pricing regime in Indonesia. This research focuses on Indonesia given that: it is a developing nation; it is one of the biggest foreign direct investment destinations in the Asia Pacific region; and the Indonesian nation adopts the OECD transfer pricing regime into its tax law. To date, studies on the Indonesian transfer pricing regime can be grouped into three categories, i.e. the description of the existing transfer pricing system, the perception transfer pricing rules by the taxpayer and tax auditor, and the effectiveness of the existing regime. However, there have been few tax-based law studies which have developed an alternative transfer pricing regime for Indonesia.

To achieve this research objective, four research questions are addressed. First, in relation to its historical and economic circumstances, what is the Indonesian legal and policy framework for cross-border transfer pricing? Second, what significant considerations are undertaken by the Indonesian Tax Court in deciding transfer pricing disputes? Third, to what extent could Indonesia adopt an alternative transfer pricing system – such as the Brazilian, Chinese, or Mexican transfer pricing regime, formulary apportionment, to minimise aggressive transfer pricing practices by MNEs in Indonesia? Fourth, to what extent would a new alternative transfer pricing method potentially face legal challenges in its implementations?

This paper specifically focuses on research question two. That is, it considers tax court cases to examine what approaches have been taken by the Indonesian Tax Court to settle transfer pricing disputes. It is important to employ cases law to show trends, interpreting statutes, and how interpretive methods used in cases law. Moreover, the analysis includes a discussion as to what extent the court's decisions assists in maintaining the Indonesian transfer pricing regime. Preliminary results show that out of 80 transfer pricing cases law decided by the Indonesian Tax Court between 2011-2015, intangible property and intra-group transaction are the most dispute filed to tax court. The analysis reveals the legal basis of court decisions to settle transfer pricing dispute in Indonesia.

Tax Law, Compliance and Punishment: A Social Construction

Robert B Whait[21]

Significant amounts of research has been conducted into taxpayer compliance, taxation administration and interpretation of the tax law. These topics have been studied from various perspectives predominantly on the basis that they are objective phenomena and that solutions to noncompliance, for example, may be found through empirical rational investigation. Philosophical developments during the late 20th century such as structuralism, post-structuralism and post-modernism can provide another perspective by questioning whether objective knowledge is obtainable and arguing that knowledge is socially constructed. This paper applies these philosophical perspectives to Australia's tax system by the consideration of various aspects from a historical perspective. It finds that there is reasonable historical evidence to argue that many aspects of the tax system are strongly influenced by social forces. These aspects include the manner in which laws are written and interpreted and how the Australian Taxation Office (ATO) administers these laws and determines who is compliant and noncompliant. This paper discusses the implications of the social construction of the tax system with respect to contemporary tax issues such as tax law simplification, general anti-avoidance, Base Erosion and Profit Shifting and ATO service provision.

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GST compliance in New Zealand: A comparative study of taxpayers in the primary and trades sector

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Prior studies on tax compliance tend to focus on individuals and income tax. Recent comprehensive reviews of the literature (Alm, 2012; Torgler, 2008) have identified that groups of taxpayers and compliance with other tax types, such as consumption taxes, remain under-explored. To contribute to the extant literature, this study extends the work of Woodward and Tan (2015) on Goods and Services Tax (GST) compliance attitudes of small business taxpayers by using a larger sample and focusing on taxpayers in the primary and trades sector. These two sectors were selected as they are important contributors to the New Zealand economy and they potentially have more opportunities for noncompliance particularly in claim private expenses and performing cash jobs. It would also be interesting to compare these two groups of taxpayers to see if there is evidence of different group norms or attitudes that impact on compliance attitudes.

Drawing from the framework proposed by Kamleitner, Korunka & Kirchler (2012), a range of questions that relate to opportunities for non compliance with GST, GST knowledge and decision frames (and mental accounting) were included in our mail questionnaire which achieved a response rate of 15%.

The results generally supported the findings by Woodward and Tan (2015). There is some evidence of taxpayers from both sectors keeping different 'mental accounts' for GST. They also felt compliance cost as an ongoing burden with many making use of accounting software packages to record transactions and seeking help from their accountant when necessary. Risk of audit and tax penalties appeared to play a role in small business taxpayers' attitudes toward compliance. Furthermore, they displayed mixed experiences with regard to their interactions with Inland Revenue and their trust in them. Interestingly, GST morale with respect to proper invoicing and correct classification of expenses appeared positive. For many issues like cash jobs, underreporting income, or misclassification of private expenses as business related, there was little difference in views provided by taxpayers in the two sectors. Instead they perceived it is other taxpayers who engaged more in those types of behaviour. Perhaps those who were "non-compliant" chose not to participate in the survey and if this is the case, the results could be biased towards taxpayers who were more compliant.

Lastly, a number of tradespeople expressed frustration with clients who asked for cash prices recognising that they have to bear the risk of audit and penalties while the client obtained the advantage of cheaper price. This issue indicates that education could be a valuable tool not just to change the thinking of tradespeople with respect to cash jobs but the general population. A more extreme approach would be to penalise both parties to the transaction but changing society's thinking through innovative advertising campaigns and education programmes may be a more viable option in enhancing taxpayers' commitment to voluntary compliance.

Adrift in a Sea of Revenue Law and Regulation without a proper paddle

Hugh Zillmann and Christine Newport

In this presentation, we will examine the regulation and licensing of individuals and/or entities engaged in the day-to-day activity of giving business, taxation and financial advice for reward, and the extent of formal training and qualifications required to engage in such activity. We will consider the issue of whether the current training of the next generation of lawyers and accountants is failing those in society who are most dependent upon the quality of the revenue-related advice they give. How does our system of regulation deal with inexperienced professionals who, while they may be legally entitled to provide such services, don't recognize what they don't know?

Given the extent, intrusiveness and complexity of Australian taxation law, we consider the impact which this has had, and will have, upon the quality of the advice which is given. Through an analysis of the structure and content of law degrees offered by major universities across Australia, we arrive at the proposition that "the advisors may not be any better informed that those that they will advise". The paper questions whether current law degree programs effectively produce suitably qualified practitioners/professionals, who are properly equipped to service the needs of a community mired in extensive and intrusive revenue regimes, including, but not limited to, Goods and Services Tax, Capital Gains Tax, Fringe Benefits Tax and Income Tax, when providing advice on the implications of legal transactions entered into by their clients.

Further analysis of the regulatory provisions and professional codes of practice are used to generate suggestions as to how professionals may deal with these situations when they arise. Finally, we offer-up some recommendations on how to improve the quality of training to limit damage to clients and the reputation of the professional practitioners on whom they rely.