

The Australasian Tax Teachers Association

31st Annual Conference



'Tax, Innovation And Education: Tax In A Changing World'
Wednesday 16th January - Friday 18th January 2019
Curtin University, Perth WA

Welcome

The Australasian Tax Teachers Association (ATTA) welcomes members of academia, industry, government and the tax profession to the 31st annual conference hosted by Curtin University in Perth, Australia.

We would like to officially recognise our 2019 sponsors, Oxford University Press, Thomson Reuters, UniSuper, Taxation Institute (WA), Federation Press, The Perth Convention Bureau, Just Tax Consulting Pty Ltd and The Editors of Tax Design and Administration in a Post-BEPS Era.

Since its inception the ATTA conference has provided a forum for the presentation of research, scholarship and teaching in all aspects of taxation. The ATTA annual conference provides tax academics across Australasia and the rest of the world the opportunity to develop their research and teaching networks and doctoral students to present their work in a stimulating and encouraging forum. This year we are privileged to have keynote speakers from the government and the professional bodies: The Hon Minister Stuart Robert Assistant Treasurer, Andrew Mills, Second Commissioner of Law and Design and Practice, Australian Taxation Office, Karen Mills, CEO, Board of Taxation and Professor Therese Jefferson, Executive Director, Australian Research Commission. In addition The Hon. G Tony Pagone will deliver his inaugural Patron's address.

In addition to our keynote speakers the conference will include presentations by leading Australasian academics, PhD students, practitioners and government officials from a wide range of countries.

The Faculty of Business and Law at Curtin University is delighted to be hosting this event and welcomes all delegates to take part in three days of engaging presentations, workshops, plenaries and social events.

We hope you have a taxing time.

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**PERTH
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TAX, INNOVATION AND EDUCATION: TAX IN A CHANGING WORLD

Duxton Hotel, 1 St Georges Tce, Perth

Wednesday 16th January 2019

Day 1: PhD Presentations & Teaching Workshops

8.30 - 9.00 am	Registration
9.00 - 9.15 am	Welcome - Paul Fairall, Dean, Curtin Law School
9.15 - 10.30 am	PHD Presentations
10.30 - 11 am	Morning Tea
11 - 12.15 pm	PHD Presentations
12.15 - 1.15 pm	Lunch
1.15- 2.30 pm	Panel Discussions
2.30 - 2.50 pm	Afternoon Tea
2. 50 - 4.30 pm	Teaching Workshop
4.30 - 5.15 pm	Curtin Tax Clinic Presentation
5.25 pm	Buses leave from Duxton Hotel
5.30 - 7.30 pm	Opening Function Curtin St Georges Tce, 139 St Georges Tce Perth

Thursday 17th January 2019

Day 2: Technical Presentations

8.15 – 9.00 am	Registration
9.00 - 9.30 am	<p>Welcomes:</p> <p>Welcome to Country: Dr Richard Walley</p> <p>Welcome to Curtin University: Professor Nigel de Bussy; PVC Faculty of Business and Law</p> <p>President's Welcome: Prof Brett Freudenberg</p>
9.30 - 10.30 am	<p>Keynote Address 1</p> <p>Andrew Mills Second Commissioner Australian Taxation Office</p>
10.30 - 11.00 am	Morning Tea sponsored by Unisuper
11.00 - 11.40 am	<p>Keynote Address 2</p> <p>Professor Therese Jefferson</p> <p>Australian Research Council</p>
11.40 - 1.00 pm	Parallel Sessions 1
1.00 – 2.00 pm	Lunch
2.00 - 2.30 pm	Patrons Address Tony Pagone
2.30 - 3.30 pm	Parallel Sessions 2
3.30 – 3.50 pm	Afternoon Tea
3.50 – 4.50 pm	Parallel Sessions 3
6.15 - 11.00 pm	<p>Conference Dinner</p> <p>Frasers Restaurant</p> <p>Kings Park, Perth</p> <p>Buses leaving the Duxton at 6.15 pm Buses returning at 10.30 and 11.00 pm</p>

Friday 18th January 2019

Day 3: Technical Presentations

8.45 - 9.00 am	Registration
	Keynote Address 3
9.00 - 9.45 am	Karen Payne Board of Taxation
9.45 - 10.15 am	Morning Tea sponsored by The Editors of Tax Design and Administration in a Post-BEPS Era
10.15 - 12.15 pm	Parallel Sessions 4
12.15 - 1.15 pm	Lunch
1.15 - 2.15 pm	Annual General Meeting
2.15 - 2.30 pm	Afternoon Tea
2.30 - 3.45 pm	Parallel Sessions 5
3.45 - 4.15 pm	Closing Words, Prize Giving and ATTA 2020
4.15 - 6.15 pm	Farewell Cocktail Function Duxton Hotel

The organising committee reserves the right to make changes to this schedule if necessary.

Duxton 1	Duxton 2	Duxton 3
PhD Session 1	Wednesday 16 January	9.15 am to 10.30 am
International	Policy	Tax Morale/Compliance
Nugroho, Adrianto <i>Legal certainty and the beneficial ownership concept in international tax law</i>	Harrison, John <i>Pursuing Equity in the Australian Superannuation System</i>	Wanfu, Ma <i>The impact of particularised trust on tax morale in China</i>
Damon, Dylan <i>"The taxation of digital networks and the future of the arm's length principle"</i>	Peacock, Christine <i>Evaluation of the theoretical proposals in the literature for reforming the VAT treatment of owner-occupied housing</i>	Hidayat, Nurul <i>The Analysis of the Influence of Islamic Religiosity on Tax Morale Among Self-Employed Taxpayers in Indonesia</i>
V Renuka <i>Need to justify taxing power in a virtual economy</i>	Hobbs, Dylan <i>Change From Inertia: The Influence of Institutional Drift on the Development of New Zealand Land Taxation.</i>	Monageng, Mpumi <i>The effect of reciprocity and social norm nudges on tax compliance</i>
PhD Session 2	Wednesday 16 January	11 am to 12.15 pm
International	Policy	Compliance Costs/Technical
Ngwenya, Lindelwa <i>Sourcing rules and modern financing techniques: worlds apart</i>	Douehi, Josephine <i>The effectiveness of the National Tax Equivalent Regime (NTER) in encouraging competitive neutrality</i>	Shekhovtsev, Nikolay <i>Investigating costs of tax compliance of large enterprises in New Zealand</i>
Chen, Siew Yee <i>The Magnitude of Base Erosion and Profit Shifting (BEPS) of Multinational Enterprises (MNEs) with their Business Operations in New Zealand</i>	Allen, Christina <i>An analysis of income tax treatment of capital expenditure in Australia</i>	Trad, Barbara <i>Effective business structures for Australian small and medium enterprises: Is the trend of using trusts counter-productive to an innovative economy?</i>
Pavlovich, Alison <i>What should New Zealand's International Tax Policy Settings be?</i>		

Duxton 1	Duxton 2	Duxton 3	Duxton 4
International Stream	Policy Stream	Tax Admin Stream:	Tax Technical
PARALLEL SESSIONS 1	Thursday 17 January	11.40 am to 1pm	
1.1 Digital Economy	1.2 CGT	1.3 Tax Practitioners	1.4 Trusts
<p>Plekhanova, Victoria <i>From Coal Mining to Data Mining: Perspectives on Excess Profits Tax in the Digitalised Economy</i></p>	<p>Yong, Sue, & Maples, Andrew <i>Capital Gains Tax and Social Policy In New Zealand</i></p>	<p>Chardon, Toni; Freudenberg, Brett & Brimble, Mark <i>Financial Capacity Building and Professional Advisers – Initial findings for Tax and Legal Advisers</i></p>	<p>Mariott, Lisa & Barrett, Jonathan <i>Income deprivation and benefits: the role of trusts in New Zealand</i></p>
<p>Greggi, Marco <i>The Unbearable Lightness of Digital Presence: some consideration on the EU Digital Tax</i></p>	<p>McLaren, John <i>Are Australian Taxation laws deterring Australians from living and working overseas: A critical review of the proposed law to remove the main residence exemption for non-residents?</i></p>	<p>Jone, Melinda presented by Adrian Sawyer <i>Evaluating Australia's tax dispute resolution system in the context of the Australian Taxation Office's Reinvention program</i></p>	<p>Voogt, Thea <i>Income tax and trust law perspectives of the practical disregard of legal form in discretionary family trading trusts</i></p>
<p>Huang, Eva & Yansheng, Zhu <i>Balancing the Taxing Rights between Places of Value Creation and Value Realisation in the Global Digital Economy: Information Symmetry through the Automation of Record Keeping</i></p>	<p>Duncan, Alan; Hodgson Helen; Minas, John; Ong, Rachel; Seymour R <i>Income tax treatment of housing assets: an assessment of proposed tax reforms</i></p>	<p>Wallis, Chris <i>"Is there a relationship between innovations in tax practice and practitioner skill" has happened to skills in practice?"</i></p>	<p>Walpola, Sonali <i>The taxation of capital gains in trusts after Bamford: Despite the complexity, are the 'interim' measures achieving their purpose?</i></p>

Duxton 1	Duxton 2	Duxton 3	Duxton 4
International Stream	Policy Stream	Tax Admin Stream:	Tax Technical
PARALLEL SESSIONS 2	Thursday 17 January	2.30 pm to 3.30pm	
2.1 Residency	2.2 Environment	2.3 Compliance Costs	2.4 Entities
Minas, John & Hanna, Norman <i>Has 'permanent place of abode' for the purpose of the domicile test been redefined?</i>	Kraal, Diane, Victoria Haritos & Cantley-Smith, Rowena <i>Re-Thinking Biofuels in Australia: An analysis through the lens of energy law and policy</i>	Rametse, Nthathi; Santharisa, Appadu; Makara, Tshepiso & Devos, Ken <i>Start-up Compliance Costs of the Malaysian Goods and Services Tax for Small and Medium Sized Enterprises</i>	Walpole, Michael <i>The meaning of legal goodwill as a result of the appeal in CSR (WA) v Placer Dome Inc.</i>
Jogarajan, Sunita <i>A Review of the Permanent Establishment Article in Australia's Tax Treaties</i>	Fullarton, Lex <i>A Tale Of Two Taxes: Clean Energy Act 2011 (Cth) V Renewable Energy (Electricity) Act 2000 (Cth)</i>	Tran-Nam, Binh & Nguyen, Phuong Lien <i>The impact of tax rate, compliance burden and governance on tax effort: Evidence from emerging Asian countries from 2004 to 2015</i>	Azzi, John <i>Preserving the Constitutional Function of Courts and Increasing Confidence in the Tax System: Time to re-consider Futuris</i>
PARALLEL SESSIONS 3	Thursday 17 January	3.50 pm to 4.50 pm	
3.1 Digital Economy	3.2 Social Responsibility	3.3 Compliance	3.4 Technical
Khan, Shafi <i>Taxing the digital economy in Europe: The proposed EU legislation for corporate taxation of significant digital presence</i>	Mann, Roberta; Martin, Fiona & Butcher, Bill <i>How Might Corporate Tax Rates Affect Corporate Environmental Social Responsibility?</i>	Cassidy, Julie <i>Common Law Tax Avoidance Arrangements v Civil Law Tax Abuse</i>	Hanna, Norman & Boccabella, Dale <i>Franked distributions "passing" through closely held trusts: Analysis of selected problems and solutions where related expenses and/or other trading losses exceed the distribution</i>
Pearce, Prafula & Pinto, Dale <i>Clayton's Business Warehousing and Profit Tax</i>	Devos, Ken <i>Access to Housing Benefits under Dwelling Scarcity: Implications of increasing the Housing Benefit Tax in PNG</i>	Datt, Kalmen <i>Tax system integrity</i>	Kayis- Kumar, Ann & Taylor, John <i>The Application Of Capital Gains Tax To Trusts In A Changing World: Practical Issues And Proposals For Reform</i>

Duxton 1	Duxton 2	Duxton 3	Duxton 4
PARALLEL SESSIONS 4	Friday 18 January	10.15 am to 12.15 pm	
4.1 Teaching	4.2 BEPS	4.3 Taxation Frameworks	4.4 Compliance
Evans, Alex <i>A new socratic method for Australian law schools in the 21st century</i>	Gao, Fei <i>"Will Profit Split Method be a Powerful Anti-BEPS Weapon?"</i>	Burch, Micah <i>Taxation of the Commercialised Body</i>	Yong, Sue; Lo, Karen; Freudenberg, Brett & Sawyer, Adrian <i>Tax Compliance in the New Millennium</i>
Murraylan; Clements, Jared; Cianfrini, Melissa & Wilson-Rogers, Nicole <i>Taxation, Innovation and Education: Reflections on a Flipped Classroom</i>	Smith, Andrew <i>The OECD's Multilateral Instrument (MLI) – Will It Save New Zealand From Multinationals' Tax Avoidance?</i>	Ooi, Vincent & Glendon Goh <i>Taxation of Automation and Artificial Intelligence as a Tool of Labour Policy</i>	Bevacqua, John <i>Slippery Slopes and Digital Divides: Exploring the Effects of a 'Digital by Default' Approach to Tax Service Provision on Taxpayer Compliance Behaviours</i>
Mortimore, Anna; & Kayis-Kumar, Ann; <i>Tax teaching implications of the 10-Second Tax Return: Educating and equipping the next generation of tax professionals</i>	Ting, Antony <i>Creating Interest Expense Out of Nothing at All – Policy Options to Cap Deductions to "Real" Interest Expense</i>	McCredie, Bronwyn; Sadiq, Kerrie & Chapple, Ellie <i>Navigating the 4th Industrial Revolution: Taxing automation for fiscal sustainability and equality</i>	Walker, Benjamin <i>The opportunities and challenges of artificial intelligence to the tax profession</i>
Stern, Steven <i>Ramifications of change for the university sector</i>	Nugroho, Adrianto <i>International tax research in post-BEPS era</i>	Joseph, Sally <i>How Equitable is Australia progressive tax rates?</i>	Huang, Eva & Xi, Nan <i>Another Place to Hide Business Activities? The Side Effects of Social Media Platforms</i>

Duxton 1	Duxton 2	Duxton 3	Duxton 4
PARALLEL SESSIONS 5	Friday 18 January	2.30 pm to 3:45 pm	
5.1 Policy Options	5.2 Bitcoin	5.3 International	5.4 Compliance Costs
Barrett, Jonathan <i>Should we treat artworks as merit goods for tax purposes?</i>	Gregory, Robert <i>The Commissioner's Position on Bitcoin: A Search for a Legal or Economic rationale.</i>	Alfred Tran & Wanmeng Xu <i>Book-tax Relations of Large Australian Companies</i>	Tjen, Christine; Vitria, Indriani & Panggah, Tri Wicaksono <i>Trust, Information System Quality and Perceived Net Benefit: A Study on the Use of Tax e-Filing in Indonesia</i>
Bowler-Smith, Mark <i>Dynamic State Taxation</i>	Cassidy, Julie & Cheng, Man Huang Alvin <i>A toss of a (bit)coin: The uncertain nature of the legal status of cryptocurrencies in Australia and NZ</i>	Alpert, Karen <i>Callous Neglect: The impact of United States tax reform on nonresident citizens</i>	Makara, Tshepiso & Sawyer, Adrian <i>Possible Value Added Tax Simplification Measures for Small Businesses in Botswana – Lessons from New Zealand</i>
Kayis-Kumar, Ann Mellor, Peter & Evans, Chris <i>Tax deductions in a changing world: Policy options for dealing with the costs of tax advice</i>			Rametse, Nthati; Appadu, Santharisa; Makara, Tshepiso, & Devos, Ken <i>Small and Medium Sized Enterprises & the Goods and Services Tax: An Analysis of Major Implementation Issues for Malaysia, Botswana & Australia</i>

Patron



The Honourable Tony Pagone

The Hon. Tony Pagone retired from the Federal Court of Australia where he had been the national co ordinating judge of the Taxation National Practice Area and has taken chambers to do arbitrations, mediations and advice. Before his appointment to the Federal Court he was a judge of the trial division of the Supreme Court of Victoria and had been the judge in charge of the Commercial Court of that Court.

He graduated from Monash University in 1979 with a Bachelor of Laws and from Cambridge University with a Master of Laws in 1983. In 2014 he was awarded an LLD from the University of Melbourne for his research and published work on anti tax avoidance provisions. He was admitted in Victoria as a legal practitioner in 1980, signed the roll of counsel in 1985, and was appointed Queen's Counsel for Victoria in 1996. He practised widely in taxation law, commercial law, administrative law, constitution law, public and human rights law during his career at the Bar. He was also Special Counsel to the Australian Taxation Office between 2002 and 2004.

He is a professorial fellow of the Melbourne Law School and lectures in several post-graduate courses at the Melbourne Law School and from time to time in the Law Faculty at Monash University. He is a vice president of the International Association of Judges and had been on the board of the International Association of Tax Judges.

Keynote Speakers



The Hon Stuart Rober MP Assistant Treasurer, Commonwealth of Australia Federal Member for Fadden

Stuart Robert is a Federal Minister serving as the Assistant Treasurer in the Morrison Coalition Government. Stuart has served his nation in the Australian Parliament's House of Representatives since 2007.

Stuart was a Minister of State in previous Governments serving at different times as the Assistant Minister for Defence, the Minister for Veterans' Affairs, Minister for Human Services and the Minister Assisting the Prime Minister for the Centenary of ANZAC. Stuart has also served as the Chair of the Joint Standing Committee on Treaties.

Prior to entering Parliament, Stuart owned a medium sized Information Technology company that was twice named as one of the fastest growing 100 companies in Australia. He also served in the Australian Army for 12 years as an Infantry and Intelligence Corps Officer and is a graduate of the Australian Defence Force Academy and a top 10 graduate of the Royal Military College Duntroon. Stuart saw operational service in 1998 on the PNG Island of Bougainville following the devastating civil war.

Stuart was a founding director of Watoto Australia and a member of the Watoto International board. Based in Uganda, Watoto operates the world's largest non-institutional orphan care program and is now exporting this program globally.

Stuart holds an MBA, M Info Tech and a BA (Hons).

Stuart is married and has three sons. He loves 4WDing with his children, paragliding, playing the piano and serving in his local church.



Andrew Mills Second Commissioner Australian Taxation Office

Andrew Mills, CTA (Life) is the Second Commissioner, with overall responsibility for the ATO's law practice, including law interpretation, dispute prevention and resolution and the ATO's role in policy and law design. Andrew has more than 30 years of experience in taxation, including periods in the ATO, commerce and the tax profession.

Andrew was a Director at Greenwoods & Freehills for more than 20 years and managing director of the firm from 2006 to 2011. Andrew was President of The Tax Institute in 2006–2007 and is a former Governor of the Taxation Research Foundation. In practice, Andrew was an active participant and representative of a number of industry bodies.

Andrew holds a Bachelor of Business, a Master of Laws and a Graduate Diploma in Tax Law. Andrew is a Chartered Taxation Adviser (Life), a member of the Australian Committee of the International Fiscal Association and a graduate of the Australian Institute of Company Directors.



Professor Therese Jefferson
Executive Director
ARC

Professor Therese Jefferson joined the ARC in February 2017 as Executive Director for Social, Behavioural and Economic Sciences.

Prior to commencing at the ARC, Professor Jefferson was a Research Fellow at the Curtin University of Technology, within the Curtin Business School. In 2013 she was awarded the Curtin Business School Researcher of the Year. She was also a founding member and Co-Director of the Women in Social & Economic Research (WiSER) unit established in 1999 at Curtin University.

Professor Jefferson's research expertise lies in the gendered aspects of employment, economic security and labour markets, with special interest in the economic well-being of people in later life and the use of mixed methodologies in economics.

During her career Professor Jefferson has been involved with a wide range of applied economic and social research that has been commissioned by industry and policy organisations, including undertaking research projects for the Workplace Gender Equality Agency, Human Rights and Equal Opportunity Commission, Fair Work Australia, Western Australian Health Department and Resources Industry Training Council.

Professor Jefferson's research has been published in a range of national and international journals and other forums, including the Cambridge Journal of Economics, Australian Bulletin of Labour, Journal of Economic Psychology, Journal of Socio-Economics, Feminist Economics, Journal of Industrial Relations, Leadership, Journal of Economic Methodology, Economic Record, Review of Political Economy and Higher Education Research and Development. Until 2017 she was a member of the editorial board of Economic and Labour Relations Review.



Karen Payne
Chief Executive Officer
Board of Taxation

Karen Payne, CTA, was appointed as the inaugural Chief Executive Officer of the Board of Taxation, effective 31 March 2016. She is also a Member of the Board of Taxation, appointed in May 2015. She chaired the Board's working group that advised on the implementation of the OECD hybrid mismatch rules – both generally and specifically in relation to regulatory capital. Karen was a member of the Board of Taxation advisory panel and assisted with the reviews of tax arrangements for managed investment trusts, venture capital limited partnerships, collective investment vehicles, the investment manager regime and the arm's-length debt test.

Karen was previously a Partner at Minter Ellison focusing on international and corporate taxes for the financial services industry, and mining, energy and utilities sectors. Karen has assisted domestic and international corporations and funds (equity, infrastructure, property, private equity and venture capital) with advice on structure, M&A and taxation due diligence.

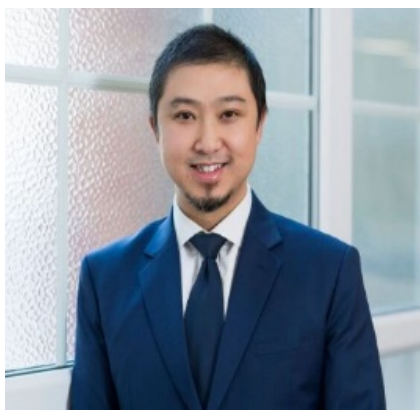
Panel Discussions - Wednesday 16th January



FACILITATOR

Marc Stoitis
Industry & Careers Development
Curtin University

Marc is currently the Manager of Industry and Career Development in the Faculty of Business and Law at Curtin University. His role predominately focus on the participation, careers development and careers connectedness of the business faculties student cohort through intra and extracurricular work integrated learning activities.



INDUSTRY

Leon Mok
Managing Director Tax Division
Pitcher Partners Perth

Leon Mok, CTA, is the Managing Director and leads the Tax Division at Pitcher Partners Perth and has over 20 years of tax consulting experience. His practice area is primarily corporate and international tax with clients ranging from small-cap listed companies, large private groups as well as large multinationals across a variety of industries. Leon previously worked with Big 4 accounting firms in Melbourne and Singapore practicing in corporate and international tax.



Sean Neary
Director Neary Consulting Pty Ltd

Sean Neary is the founder of Neary Consulting, a boutique tax consulting practice in West Perth. Sean leads a team of seven dealing with complex tax matters such as ATO audits, international tax, mergers and acquisitions, business improvement and virtual financial controller roles. In terms of industries, the practice focuses on mining services, property development and small listed companies. Sean has a Bachelor of Economics, Master of Tax Law, is a Certified Practising Accountant and a Fellow of the Tax Institute. In terms of recruitment, Neary Consulting hiring mix includes bringing on one graduate per annum, plus selected lateral hires.



Chad Dixon
Partner Taxation
EY

A Perth based Corporate Tax Partner with more than 25 years' experience. Chad started as a graduate within Ernst & Young's Perth tax division in 1993 and has been a partner for over 14 years. Chad specialises in providing taxation advice to the Oil and Gas industry. His clients include international oil companies, national oil companies and independent oil companies. In addition, Chad advises service providers to the industry, including oil and gas engineering and construction companies, drilling rig operators and various service providers. Chad specialises in corporate tax, transaction structuring, inward investment and petroleum industry taxes including Petroleum Resource Rent Tax. In addition to providing tax services to clients, Chad is EY's lead client service partner on a number of EY's major accounts.

He leads the graduate recruitment program for EY's Perth taxation division. Chad is a Chartered Accountant, Chartered Tax Advisor and Tax Agent.



GRADUATES

Shona Pereira
PwC | Manager - Corporate Tax

After completing a Bachelor of Commerce (Accounting & Taxation major) at Curtin University in June 2011, I obtained a Graduate position with Deloitte (Perth) in March 2012 in their Corporate & International Tax team. In October 2015, I moved to PwC (also in their Corporate & International tax team). Throughout my (relatively short) career, I have been exposed to various tax matters such as income tax compliance (i.e. preparation of annual income tax returns, tax effect accounting etc.), ATO assurance reviews, tax consolidation, inbound/outbound structuring advice, financing advice, tax due diligence reviews, PRRT and a wide range of other tax related matters.

I'm currently a Manager at PwC and continue to learn new things every single day. Whilst I do not currently have an industry focus, majority of my clients operate in the mining, oil and gas, services and small goods business. The best part of my job is getting to meet new people, working with a very bright team and continually growing as a professional tax advisor.

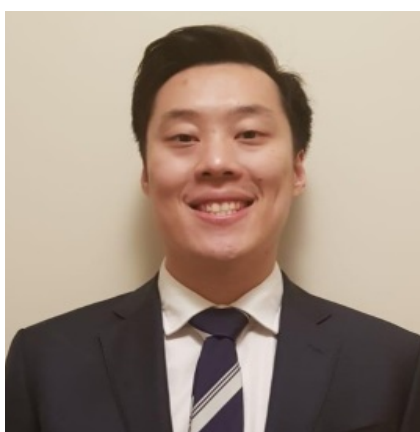
Since graduating Curtin University, I have obtained my Chartered Accountants of Australia and New Zealand and completed my Graduate Diploma of Taxation (University of Sydney).



James Galati
Associate | Deloitte Legal Pty Ltd

James Galati is an Associate at Deloitte Legal in Perth. He is a lawyer with 5 years' experience with a particular focus on tax dispute resolution, complex tax advisory work in respect of both Federal and State taxes, and general commercial work. James has worked with a broad range of clients from large Australian and multinational corporations to high wealth individuals and family groups.

James graduated from the University of Western Australia with a Bachelor of Laws and Bachelor of Commerce in 2013, and is currently studying his Master of Laws at the University of Sydney. James is a member of the Tax Institute of Australia and has presented guest lectures at the University of Western Australia.



Jesse Yan
Graduate | Tax Counsel Network
Australian Taxation Office

Jesse Yan holds a Bachelor of Laws and Commerce from the University of Western Australia, and is currently a Graduate Officer at the Australian Taxation Office. He has multiple work experiences within the private legal sphere, having also completed clerkships with His Honour Judge Stevenson (District Court of WA) and the Hon Justice Jenkins (Supreme Court of WA). More recently, in mid-2018, he was admitted as a lawyer. As part of the legal stream in the 2018 ATO Graduate Program, he completed his two rotations within the Review & Dispute Resolution and Tax Counsel Network business lines. He was also the project lead for the recent 2018 TEDxATOPerth internal event. In the near future, Jesse hopes to undertake a Master of Laws or a Master of Taxation Law.



Conor Doyle
Analyst Tax Services
RSM Australia Pty Ltd

Conor graduated mid 2017 from Curtin University with a Major in Accounting. He had previously done VAC work with RSM in 2016 and has been working with RSM since graduating and is currently studying to become a CA. He is part of the Tax Services division of RSM and works as part of the Corporate Tax team.

Teaching Workshop - Wednesday 16th January



Sonia Ferns
Curtin University

Sonia Ferns (PhD, MEd, BEd, Diploma in Training and Assessment Systems) Sonia is the Science Curriculum Academic Lead and manages the Course Optimisation Strategy in the Faculty of Science and Engineering. She is also responsible for work-integrated learning governance at the University. Previously she managed the Course Design team and led the Work Integrated Learning strategic project to establish an institutional framework for WIL at Curtin. She is the national President of the Australian Collaborative Education Network (ACEN) Board. Sonia has worked on many national projects on WIL and has published extensively on industry engagement and WIL. She works collaboratively with an international consortium of WIL researchers.



Anna Bunn
Curtin University

Dr Anna Bunn has a PhD from University of Notre Dame Australia, as well as an undergraduate law degree and a Master's degree from Oxford University. She is currently a Senior Lecturer and Director of Learning and Teaching for Curtin Law School. Anna's PhD considered the legal issues relating to children's images online and whether children should have greater control over their image.

Anna was admitted as a solicitor of the Supreme Court of England and Wales in 1992. She practised in a large commercial firm, specialising in franchising and intellectual property law, before leaving legal practice to live and work in the not-for-profit sector in Indonesia, and then in academia. She took up a position at Curtin in 2008.

Anna has published a number of papers in peer reviewed academic journals, as well as two book chapters. Her research interests lie primarily in the areas of law, technology and privacy; torts; legal and policy issues around health; child rights and the role of law as an instrument of socio-cultural change.

ABSTRACTS

PhD SESSION 1: - Wednesday 16th January 9.15am – 10.30am

Adrianto Dwi Nugroho Associate Professor in Tax Law at Faculty of Law, Universitas Gadjah Mada (Yogyakarta, Indonesia). Doctoral student at Faculty of Law, University of Helsinki (Finland)

Legal Certainty and The Beneficial Ownership Concept In International Tax Law

My doctoral research aims at establishing legal certainty towards beneficial ownership in international tax law. Divergent laws, jurisprudence, and literatures on beneficial ownership have jeopardised taxpayers' ability to foresee the legitimacy of their transactions and entitlement to subsequent treaty benefits. In 2016, Meindl-Ringler¹ concluded that beneficial ownership has not been interpreted in its ideal meaning as an income attribution measure, but rather as means to encounter 'improper corporate structures' (i.e. conduit structures). Furthermore, she argued that it will be difficult to direct judges away from their upheld jurisprudence.² Her studies closely examined scholarly discussions on approaches in defining beneficial ownership, namely anti-avoidance rule, attributes-of-ownership, the so-called forwarding approach, Wheeler's 'new approach', and income attribution.³ She eventually favoured for the income attribution approach, as it is advantageous in the sense that it 'excludes agents and nominees from claiming treaty benefits, eliminates double taxation, (...) relatively easy to apply, and (...) has a strong historical foundation (...) in the 1977 OECD Model and earlier U.K. treaties'.⁴ This approach has not, however, established legal certainty, for states and courts have continued to legislate and rule on the issue differently.

My research is based on an inductive reasoning that legal certainty must be established towards beneficial ownership in international tax law. For the purpose of the research, I adopt the meaning of legal certainty as established in case laws of the Court of Justice of the European Union (CJEU) and compiled by van Meerbeck,⁵ namely as a principle requiring that "rules of law be clear, precise, and predictable as regards their effects". Notable legal principles often associated with the principle of legal certainty include the principles of non-retroactivity and legitimate expectations. In the EU, the principle of non-retroactivity requires that the law limits its enforcements *ex nunc*—as opposed to *ex tunc*. Consequently, any conduct committed prior to publication of enacted legislations or court rulings governing on such conduct may not be sanctioned. Time constraint is also decisive in establishing the principle of legitimate expectations, which requires that persons affected by newly-enacted legislations or new court decisions are able to foresee the consequences of their conducts.

Meanwhile, also, in the EU, the principle of prohibition of abuse of law has taken precedence over the principles of legal certainty and legitimate expectations. Not only that the principle of prohibition of abuse of law can remove the limitations on the *ex tunc* effect of CJEU decisions, but also the *res judicata* effect of national court decisions in EU Member States. In international tax law, prohibition of abuse of law has influenced the OECD to shift its paradigm towards the purpose of DTCs, from avoidance of double taxation to prevention of double non-taxation. Questions of my research are first, what are the flaws of the existing concepts of beneficial ownership leading to legal uncertainty? second, how can legal certainty within the international tax law concept of beneficial ownership be established?

DYLAN D. DAMON (PhD Candidate, University of Sydney)

The Taxation Of Digital Networks And The Future Of The Arm's Length Principle

Taxation of the digital economy represents the ultimate trial for the arm's length principle and perhaps the long-term viability of tax treaties--a regime that has faithfully served the international taxation system for the better part of the last century. The meteoric rise of the digital economy and prominence of the Base Erosion and Profit-Shifting ("BEPS") agenda has resulted in many commentators demanding reform through alternative mechanisms for the allocation of income between associated enterprises of multi-national enterprises ("MNEs"), such as formula-based or destination-based (cash-flow) systems of taxation.

This paper contends that such measures are unwarranted and the reading of the last rites for the arm's length principle to be premature. It argues that the issues faced by policy-makers as they pertain to the taxation of digital networks to be unique only in a very superficial way, as they are not dissimilar from the issues faced by policy makers in the previous decade in relation to the taxation of supply-side business restructurings. In a similar vein to how the arm's length principle was sufficiently flexible and

adaptive to address those issues, it is postulated that it may be “re-imagined” to address the challenges brought upon by digital networks.

The paper proposes two possibilities for the valuation and taxation of digital networks through existing transfer pricing rules based on the arm’s length principle. In doing so, it reaffirms the dominance of the arm’s length principle as the international standard for allocation of income between related parties and traditionally concepts found in tax treaties, such as permanent establishments (PEs). This, in turn, will ensure the longevity of the existing international taxation convention.

In arriving to this conclusion, the paper addresses a critical and perhaps understated question: *To what extent should policy-makers be taxing digital networks?* The paper proposes that MNEs operating in the digital economy earn a unique form of economic rent, known as Schumpeterian Rent (or Innovators’ Rent) which is transitory and unstable. The public policy justifications for the taxation of digital networks and, in particular, this form of rent, are found not to be compelling. The advantage of the arm’s length principle over the other proposed systems of taxation is that it does not tax the entirety of this type of economic rent. Therefore, the arm’s length principle is identified as the preferred mechanism for the allocation of income from digital networks between related parties.

Renuka V: School of Legal Studies, Cochin University of Science & Technology, Cochin, Kerala, India

Need To Justify Taxing Power In A Virtual Economy

This paper shall focus upon the challenges for justifying the taxing power of state over of activities in the digital world. The digital activities have been taking place in a platform created not by the state but by the technology. Hence, how can the state expect revenue from the profit earned from such platform by persons or entity? The traditional justifications for taxations are generally based on the *quid pro quo* relation of state and society where state facilitates conditions necessary for earning to the community. The age old benefit theory was stretched enough to justify the taxing power of modern state. Later the social contract theory propounded a broad perspective for the taxation process and later the movement of romanticism has taken the very idea of state to a different dimension which itself has diluted the necessity to justify taxation. Though the scholars vary on their reasoning to build a philosophical ground for taxation, they accept the reciprocal relation between the state and the society in a large sense. It can also be analysed that international taxation principles are also in consonance with traditional theories of taxation. But the question that has to be addressed here is whether the same can be extended to the virtual world, or any modification or additional justification is required for imposing the state taxing power? From the perusal of the existing literatures, it can be inferred that the state power to tax the virtual economy requires a solid and strong jurisprudential patronage as the existing principles are insufficient to stretch the real world power to the virtual world.

John Harrison PhD Candidate University of Adelaide

Pursuing Equity in taxing the Australian Superannuation system

By way of background, the superannuation system provides annual tax concessions in the order of \$30bn plus. My research found that small numbers of the wealthy receive billions of dollars in super tax concessions, while large numbers of low-income earners receive very little or none - That’s unfair! And its year, after year!

Much of the concerns rise with the vertical inequity of the superannuation system, in that the wealthy benefit from the superannuation tax concessions although they have more capacity to pay. This remains the case despite the improvements made by the Turnbull Government reforms to superannuation in December 2016, such as introducing a \$1.6m balance cap.

But what about intergenerational equity? Is it unfair if younger generations pay for retirement benefits of older generations? And is this sustainable, in an ageing population with decreasing proportion of workers? The allocation of resources becomes an increasingly significant issue given that in the next 2 generations it is forecast there will be 40% less workers/retiree to pay taxes. So, what welfare programs will be cut? Look at it this way - in 20 years, will there be angry clashes in the streets between the aged vs unemployed & youth - over entitlements, like those clashes that occurred in the EU and US during the Global Financial Crisis?

On the flip side, low income earners enjoy retirement benefits through aged pension & welfare services - Do these benefits counter-balance super concessions afforded to the wealthy? And what do the middle class get in all of this?

I intend to provide a finalised paper at the ATTA Conference of approximately 15,000 words that examines the interrelationship of the finance system and the taxation of the superannuation system. I will then seek to publish that paper.

My paper seeks to answer the following questions:

Is their fairness in the distribution of tax concessions - are they fair to all? Low-income earners vs middle-income earners vs high-income earners.

- Is it fair and wise that the highest level of tax concessions are provided via super compared to all other investment options? Should super be taxed like other investments.
- Are the tax deductions for super fair?

- When is it fair to tax - the taxing point? Contributions, vs earnings vs benefits stages?
- Should super fund income be taxed so concessionally?
- Is it fair how super is taxed at the benefits stage, in terms of lump sums vs income streams.
- How does the Small Business Concession fit into this equity mix?
- Are there more efficient ways that will result in a fairer distribution of resources? For example, should a pension be provided to all eligible Australians regardless of means, (as is done in New Zealand) - and given this is a cheaper option compared to the cost of tax concessions, isn't it fairer that all Australians benefit from such public welfare, rather than through tax concessions that serve the wealthy, not the poor.

Christine Peacock Lecturer, Federation University Australia and PhD candidate, University of Canterbury, New Zealand

Evaluation of the theoretical proposals in the literature for reforming the VAT treatment of owner-occupied housing

In jurisdictions with a Value Added Tax ("VAT"),¹ the normal practice is that sales of new residential premises are subject to VAT, whereas subsequent sales of residential premises are generally regarded as exempt from VAT, or outside its scope. Under what is known as the prepaid method, it is assumed that the value of new residential premises at the time of purchase is equal to the use and enjoyment (consumption) of the residential premises. However, the consumption value of residential premises generally appreciates over time (as the property increases in value), so that the value of total consumption may be greater than the value of residential premises at the time of first purchase. This is problematic from the perspective that VAT is a consumption tax, and the key economic objective of the VAT is to tax the flow of consumption.

Several authors, including Cnossen², Conrad and Grozav³ and Poddar,⁴ have suggested alternatives to the current use of the prepaid method in the context of residential property. This study will compare and evaluate the theoretical proposals mentioned in the VAT literature and consider whether they would achieve a closer alignment to the VAT policy objective of taxing consumption as compared to the current approach.

1. Whilst VAT was the traditional name for the broad-based VAT system which was implemented in the European Union, countries which have more recently introduced this system of consumption tax, such as New Zealand and Australia, have called it a GST. As VAT is the traditional name used for this type of consumption tax, and it is the term most commonly used in the international sphere, it will be the term which will be used throughout this paper.

2. Sijbren Cnossen, 'Three VAT Studies' (90, CPB Netherlands Bureau for Economic Policy Analysis, 2010), 71.

3. Robert Conrad and Anca Grozav, 'Real Property and VAT' in *VAT in Africa* (Pretoria University Law Press, 2008), 90.

4. Satya Poddar, 'Taxation of Housing Under a VAT' (2009) 63 *Tax Law Review* 443, 458.

Dylan Hobbs PhD Candidate, School of Accounting and Commercial Law, Victoria University of Wellington

Change From Inertia: The Influence of Institutional Drift on the Development of New Zealand Land Taxation.

This article is part of a larger thesis that examines the historical use of land value taxation by the New Zealand central government over the period 1891 – 1991. Over a century of operation there was significant change in both the New Zealand land tax's form and function. In some cases this change can be directly attributed to new legislation or as a response to particular events. However, outside of times when land tax law was under active consideration or was seen as a pressing political issue, land tax spent much of the century in a state of legislative lethargy; despite this the land tax's effects and influence continued to change.

This study focuses on the development of New Zealand's land tax during periods of little or no legislative change, analysing how land tax developed despite static legislation and why it did so. To this end the work adopts a historical institutionalist framework, with a particular focus on institutional drift, to help explain how rigid tax law and processes in a changing environment played an important part in land tax development. Other institutional factors considered to be influential include path dependency, ideas and politics.

The work adopts qualitative research methods and 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. Overall the study aims to show how failure to engage in regular maintenance of taxation systems can, over time, lead to systems that operate differently from how they were intended to.

Wanfu, Ma (Maggie) Ph D Candidate University of Western Australia

The impact of particularised trust on tax morale in China

Tax non-compliance represents a prevalent phenomenon that happens in almost all societies and economic systems. Thus, the question of how to encourage taxpayers to comply with the tax laws has attracted the attention of both governments and academics. To answer this question, a number of scholars suggest that taxpayers' actual tax compliance decisions and behaviours are made based on tax morale.

This study aims to investigate the relationship between particularised trust and tax morale among small business taxpayers in China. This study contributes to the existing literature in two important ways. To my best knowledge, there is one study which systematically discussed the impact of particularised trust on tax morale for small businesses in China (Sharkey, 2010). Thus, this study is going to fill this under researched area in the recent literature by conducting a qualitative and quantitative Investigations. Second, this study provides valuable information for policy makers and tax administrators. The findings of this research contributes to a better understanding of particularized trust and tax morale in China, thus allowing policy makers and tax administrators to identify strategies that will improve tax compliance.

The proposed research adopts mixed methodology due to it provides the researcher with more flexibility, allowing the employment of different research methods from different paradigms, including quantitative and qualitative methods.

Nurul Hidayat School of Law, the University of Western Australia

The Analysis of the Influence of Islamic Religiosity on Tax Morale Among Self-Employed Taxpayers in Indonesia

This study will extend the existing literature by investigating the influence of Islamic religiosity as a moderating variable on the relationship between the perceptions of government legitimacy and tax morale among self-employed taxpayers. The Islamic religiosity dimensions are adopted from the Glock and Stark typology. Data is collected through a survey. Survey method is employed on 424 self-employed taxpayers in 5 different cities in Indonesia. The result of this study showed that some dimensions of Islamic religiosity (experiential / spirituality and inter-consequential) have a significant positive correlation on the intrinsic motivation to pay tax. Specifically, the experiential / spirituality dimension has a moderating effect on the relationship between the perception of distributive fairness and the intrinsic motivation to pay tax. On the other hand, the support for the Islamic state ideology significantly strengthens the acceptance of tax evasion referring to the particular interpretation of the Islamic law. In contrast, the positive perception of democracy significantly weakens that acceptance of tax evasion.

Mpumi Monageng PhD Candidate University of Pretoria

Effect of Reciprocity and Social Norm Nudges on Tax Compliance

Nudging has become a policy tool used by governments across many areas, including taxation, to encourage or discourage certain behaviours amongst citizens. Given the current interest of scholars and governments in nudging and the move by some revenue authorities (such as the South African Revenue Service (SARS) and the Kenya Revenue Authority) towards using advertising campaigns as both an education tool and as a tool to communicate reciprocity messages, this paper aims to shed light on the current understanding from literature of the impact of communicating such messages as a nudge to encourage voluntary tax compliance.

The paper also investigates the impact of timing on the effectiveness of such nudges based on the literature reviewed.

The paper also discusses the planned research method that will be followed in the study. The study will adopt a mixed-method approach in addressing the research questions. Initially, a qualitative phase will be carried out by conducting focus groups with taxpayers, tax practitioners and tax educators. The aim of the focus groups is to gather information to be used to determine the content of the reciprocity and social norm nudges to be used in the second phase. The second phase of the research relates to two sets of classical experiments.

PhD SESSION 2: - Wednesday 16th January 9.15am – 10.30am

Lindelwa Ngwenya (PhD Candidate: Taxation and Business Law, University of New South Wales)

Sourcing Rules And Modern Financing Techniques: Worlds Apart

While innovative financial products pose challenges to tax policy by presenting characterisation, timing and pricing issues, they also undermine sourcing rules. When the principle of economic allegiance, on which sourcing rules are based, was first introduced in 1923 non-traditional forms of finance such as derivatives existed but did not become traded in high volumes nor were they common place in international trade until the introduction of computers in the 1970s. Not only did the introduction of computers popularise non-traditional forms of finance, but they have also ensured that these instruments continue to grow in number, ingenuity and elusiveness. Despite these developments in finance, regulatory bodies, such as the Organisation for Economic Cooperation and Development, have continued to promote recommendations that clasp onto the concept of source based on economic allegiance. This, despite growing literature that has observed the ineffectiveness of these rules when applied to income derived from derivatives and similar instruments. This observation has recently been supported by growing empirical academic literature that suggests a relationship between the use of derivatives and a corporate's reduction in overall tax liability. These studies suggest that there is an observable relationship between non-traditional forms of finance and tax evasion purposes. This paper illustrates the theoretical inadequacies of international sourcing rules, in their current form, when applied to income generated through non-traditional financial instruments. Jurisdiction to tax is extrapolated from the social contract between government and individuals. It is based on three theories; the cost theory, the benefit theory and the faculty theory. These theories form the foundation of residence and source principles. Source principles, to which this study applies, seek to determine the situs of income based on the location of the asset or income generating activities.

This study is a historical review of the development of sourcing rules and it contextualises their current form in light of modern financing techniques that are enabled by technological advancements. It applies a legal and an archival research method in pursuit of its objective.

In the interest of good tax policy, it is impressive that legislation be reviewed to ensure that it is reflective of changes in the economy. This ensures that such legislation does not become redundant. The purpose of a historical view is not to discern the intention behind the inception of the rules. Instead, it is done to determine the historical economic conditions that necessitated the construction of the rules and how the present economic conditions may warrant revision of the manner in which we attribute taxing rights.

This paper will illustrate that the generation and trade of innovative financial instruments does not adhere to the fundamental theories discussed above. It will show that this dissonance between the manner in which income is generated by derivatives in practice and the way in which sourcing rules attribute income earned through financial instruments lies in the rationale behind sourcing rules.

Siew Yee Chen PhD Candidate Dept of Accounting and Information Systems, University of Canterbury

The Magnitude of Base Erosion and Profit Shifting (BEPS) of Multinational Enterprises (MNEs) with their Business Operations in New Zealand

BEPS refers to tax avoidance practices employed by MNEs to achieve a lower taxable base by shifting profit across international borders through exploitation of gaps or mismatches in domestic tax rules of different jurisdictions. Existing studies confirm the possible adverse consequences of BEPS such as loss of government revenue, economic inefficiency due to misallocation of resources, distortion of business competition between MNEs and domestic companies and loss of confidence in the fairness of current tax systems. However, the scale and seriousness of the problem of BEPS is unclear, given that the anecdotal evidence presented by media, the statistical results of the scale of BEPS indicated in the academic research and the results of the analyses of international organizations such as OECD and IMF, vary substantially. Some commentators even raise doubts over the worthiness of the enormous effort involved in tackling BEPS. It might have little impact on improving the level of tax collections if the negative effects of BEPS have been reversed.

Therefore, this study intends to provide clarification of the uncertainties arising from the magnitude of BEPS. This study will specially measure the scale of profit shifting activities of MNEs in New Zealand given that major studies of BEPS have been done in the U.S. and European Countries. Nevertheless, this study expects to capture the effects of the post-implementation of OECD BEPS recommendation of Country-by-Country (CbC) reporting in New Zealand. Although the first CbC reporting commenced in 2017 and

only 20 Corporate groups with their headquarters in New Zealand are affected, it is a good time to examine the changes following the implementation of BEPS recommendations. After all, timely monitoring should be in place to measure the effectiveness of BEPS countermeasures. A quantitative method will be engaged in this study to analyze the magnitude of BEPS of MNEs identified from Forbes 2000 and Deloitte's Top 200. An ultimate outcome of this study is to possibly assist in establishing ranges of the scale of BEPS in New Zealand and contribute to the ongoing discussion relating to how serious the BEPS problem is. The findings of this study will also help New Zealand government to understand its current position so that it can better align its national tax rules with the development of international tax system to counteract BEPS phenomena effectively. Additionally, this study would allow the tax authority and the government to devise effective tax policies using improved statistical evidence as current tax policies and decisions are solely based on incomplete tax information.

Alison Pavlovich Assistant Lecturer at Massey University and a PhD student at the University of Auckland School of Law

What *should* New Zealand's International Tax Policy Settings be?

This research studies what tax policy settings New Zealand should have in place with regard to inbound and outbound investment. The first step in this research focusses more specifically on inbound investment in relation to business profits.

The study is a normative study that considers New Zealand's tax policy in light of the objectives and values that underpin New Zealand society. Guidance for determining these objectives and values is found in New Zealand Living Standards Framework¹ and subsequent work undertaken by Conal Smith² for The Treasury. The Living Standards Framework sets a central objective of maximising the wellbeing of New Zealanders. Smith's work provides more in depth guidance on how wellbeing might be measured by developing a comprehensive set of indicators to determine if the complex and multi-faceted goal of wellbeing is being achieved.

Some international literature on international tax policy settings around inbound investment follows a thread of reasoning that lowering or eliminating the incidence of tax on inbound investment increases inbound investment as it increases an investor's post tax rate of return. Increased foreign investment leads to increased GDP per capita by providing more employment, capital and skills to the host country. Increased GDP per capita leads to higher levels of wellbeing as inhabitants of the host country (including Government) are able to purchase more goods and services. This last thread is challenged as some research indicates higher GDP per capita does not always result in increased wellbeing. While New Zealand has not followed this line of reasoning blindly, the Living Standards Framework introduces a number of new dimensions that need to be incorporated into the policy settings.

This research provides new insights into how tax policy settings might be adapted in order to take into account the new findings around the pathways to wellbeing.

1. The Treasury "The Living Standards Framework" (2017, The Treasury)

2. Conal Smith "Treasury Living Standards Dashboard: Monitoring Intergenerational Wellbeing (2018, Kōtātā Insight)

Josephine Doueishi, PhD Candidate Curtin University

The effectiveness of the National Tax Equivalent Regime (NTER) in encouraging competitive neutrality

The Hilmer report (1993) sought to recommend a consistent national approach to encourage greater competition in the Australian economy. One of the ways it sought to do this was to remove any competitive advantages government owned businesses might have by the way of any tax advantages. These competitive advantages needed to be removed in order to achieve competitive neutrality - a market whereby all firms compete on a level playing field and are subject to the same rules and regulations regardless of their ownership. This aim to achieve competitive neutrality between public and private businesses paved the way for the formation of the National Tax Equivalent Regime (NTER).

The National Tax Equivalent Regime (NTER) is an administrative intergovernmental arrangement under which, for competitive neutrality purposes, the Federal income tax laws are notionally applied to listed governmental business entities owned by the State and Territories as if they were subject to those laws. The resulting NTER tax is a liability owed and paid by these entities directly to their owner State and Territory Governments – it does not form part of the actual Federal income tax base as it would for privately owned companies. Apart from some specific modifications, NTER entities are treated in the same way as their federal counterparts. For example, a NTER entity is required to lodge income tax returns, make quarterly or monthly PAYG instalment payments, is subject to audit or other compliance assurance activities by the Australian Taxation Office (ATO), has the ability to seek private rulings, and is subject to interest and penalty charges in the same manner applicable to privately owned organisations.

The follow up to the Hilmer Report, the Competition Policy Review Final Report ("The Harper Review"), was released on 31 March 2015. Competitive neutrality formed one of the key competition topics covered in this report. The NTER was mentioned in several of the submissions but none called for a large sweeping reform of the system currently in place, nor was it suggested in any of the recommendations of the Final Report. It does not appear that the findings or recommendations of the Competition Policy Review will have any impact on the structure or administration of the NTER.

Key results of the research to date to be discussed in the ATTA conference include:

- The comparison of tax paid and tax allowed for regulated monopolies.
- The result of removing any form of tax neutrality and instead increasing a dividend payment to the State or Territory Government.
- A comparison of tax and dividend paid between the private and public sectors.

Christina Allen (Doctoral candidate, Law School, University of Western Australia)

The History of Capital Expenditure Regimes in Australian Taxation

The income tax treatment of capital expenses is remarkably complex in Australia. In contrast to accounting principles which look only at the longevity of benefits from expenditures when distinguishing capital and revenue outgoings, judicial doctrines interpreting the meaning of “capital” expenses for income tax purposes consider a range of tests primarily focusing on whether expenses relate to a business process or the structure of a business. Statutory rules for recognising such capital expenses are not only fragmented but also voluminous showing the years-long political and economic processes. They often yield outcomes that deviate significantly from a benchmark measure of net gains realised in the year of income.

With this background, this paper tracks the development of statutory rules for recognising capital expenses over the past century. Included are rules for the recognition of tangible wasting assets such as plant and equipment, mines, buildings, leasehold improvements and structural improvements for primary production and for the amortisation of intangible wasting assets such as intellectual property as well as outgoings for research and development and in-house software. It also explains how expenses for some wasting intangible assets that fall outside current amortisation rules are recognised as capital losses when the assets expire. Finally, it explains the role of the “black-hole expenditure” amortisation measure that allows taxpayers to recognise expenses that would be treated as revenue outgoings under a benchmark income tax or accounting principles but which are characterised as capital outgoings under judicial capital-revenue doctrines. It concludes with recommendations for reform in those areas where statutory rules are not, but were intended to be, set pursuant to the tax policy principle of consistency with the benchmark tax base. It suggests introducing new general amortisation rules for intangible wasting assets as well as reconsidering the income tax treatment of biological assets. It leaves details of the reform for future studies.

The research was carried out while the author was in receipt of an Australian Government Research Training Program Scholarship at the University of Western Australia. The author thanks Professor Rick Krever and Dr Ian Murray for support. The author is especially indebted to Professor Rick Krever who provided all-round support from the start to the end of the project with invaluable technical knowledge as well as personal encouragements. Any errors that remain are my sole responsibility.

Nikolay Shekhovtsev PhD Student, University of Canterbury

Investigating costs of tax compliance of large enterprises in New Zealand

Tax compliance costs refer to additional costs that a business taxpayer incurs in order to comply with requirements imposed on it by tax law. Being considered as a “hidden cost of taxation” (Sandford, 1995), tax compliance costs put significant strain on business resources and thus have been a focus of many empirical studies seeking to measure them.

One of the features of this type of costs is that they are regressive by nature, which implies that for businesses of the smaller size (so-called small and medium enterprises, SME) tax compliance costs appear to be more burdensome relative to large enterprises. Given the heightened interest of economic policy toward SMEs in many jurisdiction around the world, it is not surprising that the majority of studies on tax compliance costs have considered SMEs as the object of their analysis

By contrast, large enterprises have received considerably less attention in the literature on tax compliance costs, partly because unlike SMEs, large enterprises get the benefits of economies of scale, which make tax compliance costs less burdensome for them. Moreover, most of the studies that specifically focus on large enterprises were conducted almost 20 years ago, therefore creating a gap in the literature on tax compliance costs.

In spite of the fact, that large enterprises enjoy benefits of economies of scale and, therefore incur less tax compliance costs relative to the increase in their sales, in absolute terms the magnitude of tax compliance costs incurred by large enterprises is quite considerable.

Considering the gap in research literature and that large enterprises play important role in the economy, the need to gain a better understanding of tax compliance costs in large enterprises can be justified.

The purpose of the study is to investigate the costs of tax compliance of large enterprises in New Zealand. The study makes the following contribution. First, an analysis of what enterprises can be considered to be ‘large’ has been performed in order to provide clarification of the definition of a ‘large enterprise’ in New Zealand. Second, qualitative semi-structured interviews with a number of tax professionals from large accounting firms in New Zealand have been conducted in order to identify the most cost burdensome tax compliance activities and the determinants of these costs in large enterprises. Third, an analysis of these interviews and suggestions for further research are made.

Barbara Trad: PhD Student Griffith University

Effective business structures for Australian small and medium enterprises: Is the trend of using trusts counterproductive to an innovative economy?

Small and medium enterprises (SMEs) are an essential component of the Australian economy, and this research investigates whether the growing trend of the use of trusts by SMEs is representative of an effective business structure or is predominantly tax driven with little or no commercial advantages, generating systemic inefficiencies. It is important that research determines the reasons underlying the choice of trusts as opposed to other business structures, and what are the implications of such choice. Currently, the Australian tax system applies different tax treatments to different business structures. Thus, the legal structure implemented by a business can have significant effects on the business tax liabilities and the eligibility for tax concessions. The disparity in tax treatments between different business structures can influence business owners' decisions and can impact on business productivity.¹ Therefore, structural and tax rate biases may be part of the reasons for reforming the taxation of trusts.

The aim of this PhD research project is to investigate whether trusts provide commercial attributes that are more beneficial than other business structures. There appears to be non-tax (commercial) reasons for the adoption of trusts, these include the potential for limited liability and greater asset protection from creditors in case of bankruptcy or divorce.² It is vital to investigate why Australian SMEs are proactive in utilising trusts to conduct their businesses, and what are the impacts of such structure on compliance costs compared to other business structures? If aggressive tax planning is the dominant motivation for choosing trusts, a related concern is that SMEs may be adopting a business structure that does not meet their overall commercial needs. This may result in economic costs for businesses and may create a systemic inefficiency for the Australian economy. It is critical to analyse whether the use of trusts is due to aggressive tax planning, as this could lead to a potential tax revenue leakage for the government or whether there are commercial reasons for their utilisation.

1. Crawford, C., & Freedman, J. (2010). Small business taxation: A special study of the structural issues surrounding the taxation of business profits of owner managed firms. In: *Mirrlees Review. The Institute for Fiscal Studies/Oxford University Press*.
2. Vann, R. (2012). Taxation of small business. Working Papers Series, University of Sydney, Law School.

PARALLEL SESSIONS 1: - Thursday 17th January 11.40am – 1.00pm

Victoria Plekhanova; Lecturer; Massey University New Zealand

From Coal Mining To Data Mining: Perspectives On Excess Profits Tax In The Digitalised Economy

The media is full of stories of the phenomenal success and profitability of Apple and Google. The market capitalisation of Apple exceeding US\$ trillion gained international attention. With the growth of income inequality, many governments are also looking for ways to make their tax policies more equitable. An excess profits tax may improve the equity of taxation but at the expense of economic efficiency and innovation. This paper focuses on one specific reason that may be advanced for the taxation of excess profits, namely, the utilisation by businesses of economies of scale and scope at the global level, which characterises a number of digital industries. These economies, and the advantages they bring to specific businesses, have arisen out of innovative business structures, innovative business methods and innovative new goods and services that have become possible with the invention and commercialisation of the Internet. Based on an examination of experience with excess profits taxes in Australia, the United Kingdom and the United States, this paper discusses the potential for an excess profits tax to be applied in the digitalised global economy.

Marco Greggi Professor of Tax Law, University of Ferrara, Italy

The Unbearable Lightness Of Digital Presence: Some Consideration On The EU Digital Tax

On March 21st 2018 the European Commission eventually released its proposal of a Web Tax to be introduced in the European Union. The draft text has been anticipated by an unprecedented number of press releases, policy papers, OECD-inspired official positions and even leaks to the media like never before in the recent history of the Commission.

The very same Commissioner, Mr. Moscovici, appeared in a number of videoclips posted on social networks advocating the validity of the choices made and emphasizing the necessity for the EU to legislate on the matter.

The Commission actually adopted a two-prongs approach, releasing two distinct draft directives. On one side it suggested to reshape the notion of permanent establishment overwriting Article 5 of the OECD Model convention. This should be done as to accommodate the notion of 'Digital Presence' within the territory of the EU.

On the other side the Commissioner proposed also the implementation of a brand-new tax to be charged on MNEs doing business in Europe, using the Internet or equivalent technologies. New and unprecedented as it is, the new tax appears to be anyway something similar to an excise on services delivered in Europe by a non resident entity.

Frictions and tensions are more than likely with non European countries, and in particular with the US. The OECD as well stresses the necessity to reach non-conflicting and consensus-based new rules.

In the United States the Commerce clause of the Constitution prevent states from charging with their local taxes (most commonly Use tax or Sales tax) goods sold by a non resident entity (that is, a business incorporated in the US, although in a different state of the Union).

According to that principle, as it was interpreted by the US Supreme Court in the (yet) leading case *Quill vs North Dakota* (504 U.S. 298 (1992)) it was not possible for a state to charge with the local tax a sale of goods delivered from another member of the Union, as this duty would have been held inconsistent with the commerce clause. As a matter of fact the Supreme Court considered the compliance burden for the non resident (but American) entity disproportionate in comparison with the power of the state of the case to raise money.

The *Quill* doctrine lasted till a very recent moment where it has been put under discussion by two other decisions of the US Supreme Court: *Direct Marketing Association v. Brohl* (575 U.S. 2015) and *South Dakota v. Wayfair Inc.* that eventually overruled it.

The point under discussion is that the notion of Digital Presence, hard fought in the Old continent, is under under scrutiny in the US as well, although in a different perspective (income taxes here, consumption taxes there).

The goal of this paper is to test the solution proposed by the European Commissioner in the light of the US Supreme Court *doctrine*.

The final position of the author is that, despite the obvious and well-known political differences and strategies in the pursuit of the national interest, the EU and US positions could not be as distant as they appears at first glance. Moreover, a possible solution to the "Web tax" *querelle* would actually come from the US Federal legislation. Should EU implement principles similar to the ones passed by the US Supreme court in *Wayfair* this would help in easing up the tension with the American administration.

In the case of the UK, eventually, the position will be slightly complicated as the new status of non EU member but, in a way to be defined, associated country, will grant some leeway to the application of the Web tax but will also make the UK-based digital companies subject to the new rules just like the non European ones.

This research has been developed in the framework of a project supported by the European Commission (2017-1-LI01-KA203-000088) and directed by Professor Tanja Kirn, University of Liechtenstein. Any error or omission is of the sole responsibility of the author.

Eva Huang University of Sydney Business School & Yansheng Zhu Xiamen University

Balancing The Taxing Rights Between Places Of Value Creation And Value Realisation In The Global Digital Economy: Information Symmetry Through The Automation Of Record Keeping

The contemporary global economy is significantly digitalised, and these digital developments have disrupted international tax practices. The ease of concluding cross-border goods and services transactions via the internet means that income tax taxing rights may need to be reconsidered. How to balance the income tax taxing rights between the place of value creation and the place of value realisation is a hotly debated international tax issue.

Record keeping has always been an important element in tax administration and tax compliance practices. Adequate record keeping allows for international transparency and information sharing. Developments in blockchain or distributed ledger technology have enabled the automation of record keeping.

In the PRC, the Shenzhen tax administration has piloted blockchain VAT invoicing through a collaboration with Tencent. This example is a practical use-case of distributed ledger regulatory technology (Regtech) for tax administration purposes. Such technology automates the record keeping function when transactions are completed. It is therefore possible for the digital footprints of transactions to be identified in the process of balancing value creation and value realisation.

This paper discusses the balancing of the income tax taxing rights between jurisdictions that are the place of value creation and those that are places of value realisation, and how the automation of record keeping through blockchain or distributed ledger technology adds to transparency in this process.

Sue Yong Faculty of Business And Law, Auckland University of Technology & Andrew Maples UC Business School, University Of Canterbury

Capital Gains Tax And Social Policy In New Zealand

There has been much debate in recent times¹ concerning the need for a separate and comprehensive capital gains tax (CGT) in New Zealand (NZ). Some of this debate can be attributed to the prominence this topic gained in the 2011 and 2014 general elections when both the New Zealand Labour Party and Green Party of Aotearoa New Zealand included the introduction of a CGT in their respective tax policies. The arguments for such a tax include equity, base broadening, certainty, projected additional tax revenues and remedying the 'housing affordability crisis'. On the other hand, counter-arguments such as tax complexity (in the design of the CGT), overstatement of projected tax revenues, high tax compliance and administrative costs and adverse economic effects on savings and investments have been raised by opponents of a CGT.

The New Zealand Taxation Review Committee 1967 generally favoured a realisation-based CGT on "equity" grounds. However, the committee concluded that "the significant administrative problems with such a tax"² outweighed the benefits. Griffiths observes that "[o]ther reports in the following years have reached broadly similar conclusions for broadly similar reasons."³ At the political level, commentators have long stated that the enactment of a comprehensive CGT in New Zealand would be "[a] sure-fire path to political suicide".⁴ Indeed, former Prime Minister, the Rt Hon David Lange, is reputed to have characterised "a capital gains tax policy as one likely to lose not merely the next election, but the next three".⁵ After the defeat in the 2014 election, (then) Labour Party leader, Mr Andrew Little acknowledged that their CGT policy may have alienated voters in that election.⁶

Since the formation of the centre-left Labour-led coalition government in 2017, the issue of a CGT has again been singled out as an item to be considered, this time by the government appointed Tax Working Group. Against the background noted above, what has prompted the government to reconsider the issue (and to go as far as suggesting a CGT could be part of its tax policy in the 2020 general election)? The authors suggest non - taxation factors are at play, in particular that socio-economic factors such as housing affordability, child poverty and income inequality may have provided the impetus for the resurrection of the CGT debate and reflect this government's stance on social issues. Noting the forces driving a possible future CGT are multi-dimensional, in addition to highlighting the political and tax factors, the paper discusses the various socio-economic factors which may yet prove to be the 'tipping point' for the introduction of a CGT in NZ by the current centre-left government.

1. See for example Jonathan Barrett and John Veal "Equity versus Political Suicide: Framing the Capital Gains Tax Debate in the New Zealand Print Media" (2013) 19 New Zealand Journal of Taxation Law and Policy 91, 94.
2. Shelley Griffiths, 'The Game is Not Worth the Candle': Exploring the Lack of a Comprehensive Capital Gains Tax in New Zealand' (2015) 21 New Zealand Journal of Taxation Law and Policy 51, 68.
3. Ibid.
4. Bob Edlin "A sure-fire path to political suicide" The Independent (New Zealand, 5 February 2008) at 14.
5. Cited in Barrett and Veal, above n 3, at 94 (fn 25).
6. 'Little, Robertson confirm Labour's ditched policies and reveal some new ones', NBR (online), 7 November 2015 <http://www.nbr.co.nz/article/little-robertson-confirm-labours-ditched-policies-and-reveal-some-new-ones-ng-181292?utm_source=newsletter&utm_medium=email&utm_campaign=NBR%2520Heads%2520Up>

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Are Australian Taxation Laws Deterring Australians From Living And Working Overseas: A Critical Review Of The Proposed Law To Remove The Main Residence Exemption For Non-residents?

The Australian government is in the process of introducing new laws to remove the main residence exemption from income tax on the capital gain for non-resident home owners. This has been initiated on the basis that it will make housing more affordable for resident Australians. The Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures (No.2) Bill 2018 has serious implications for Australians wanting to work and live in an overseas country and change their residency status from that of Australia. In some cases, Australians need to live and work overseas for employment opportunities or for their career enhancement or even to maintain their employment if transferred by their employer. The consequences of changing residence means that the family home, the main residence will be subject to income tax on the capital gain if sold while the owner lives overseas. Home owners faced with paying income tax on the family home will be deterred from working and living overseas. This paper will critically review the intended and unintended consequences that flow from this proposed law and what this means for Australians wanting to work in another country. The paper will also make recommendations on how the proposed law may be amended so that Australian residents who own their own family home may avoid paying income tax on a capital gain that is exempt for every other Australian who maintains their Australian residency.

Alan Duncan, Bankwest Curtin Economics Centre (BCEC) Curtin University; Rachel Ong, BCEC Curtin University; Helen Hodgson, Curtin Law School Curtin University; John Minas, Griffith Business School, & Richard Seymour BCEC Curtin University

Income Tax Treatment Of Housing Assets: An Assessment Of Proposed Tax Reforms

This paper develops and models pathways to the reform of the income tax treatment of housing assets focusing in particular on negative gearing and the capital gains tax (CGT) provisions.

The existing literature has highlighted concerns around the potentially distortionary effects of the present income tax treatment of housing assets on housing market stability and housing affordability. Income tax concessions for personal taxpayers distort investment decisions, with adverse implications for the distribution of housing assets and outcomes in the housing market.

The research has been conducted in three related phases. The first phase is a policy audit of income taxes related to property investment and ownership. The second phase is an analysis of the distribution of housing tax expenditures on key housing groups across multiple datasets. The third phase is a simulation of alternative reform scenarios to allow for comparisons of the distributional and budgetary impacts of reform and transitional arrangements.

The research informs the development of policies that seek to enhance the fairness and sustainability of the income tax treatment of housing in Australia. It confirms an existing body of knowledge about the distortionary impacts of negative gearing and CGT discount arrangement, and the potential of policy reforms to alleviate these distortions, with potential benefits for stability and reduction in inequity in the treatment of different lower income subgroups versus higher income subgroups in the housing market. However, it also offers new findings that are both novel and which add to the policy evidence base.

This research was funded by AHURI and has been published as Duncan, A.S., Hodgson, H., Minas, J., Ong-Viforj, R. and Seymour, R. (2018) The income tax treatment of housing assets: an assessment of proposed reform arrangements, AHURI Final Report No. 295, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/295>, doi:10.18408/ahuri-8111101.

Toni Chardon University of Southern Queensland; Brett Freudenberg Griffith University & Mark Brimble Griffith University

Financial Capacity Building and Professional Advisers – Initial Findings For Tax And Legal Advisers

In the context of legislative obligations under the *Corporations Act 2001* ('best interests of the client') and the Tax (financial) Adviser requirements of the Tax Practitioners Board it is increasingly important for advisers to be acutely aware of their client's own understanding of financial matters being advised. Exploring the relationship of the professional adviser and their attitude towards capacity building their clients is therefore important and timely.

This research and the initial findings presented in this paper extends the prior financial and tax literacy work of the authors (see Chardon, 2011 and Freudenberg et al. 2017), and explores the advisers' role in financial (and tax) capacity building. It will specifically explore whether or not advisers seek to develop their clients' financial literacy and by what means, especially when their clients operate a small business. Recent research by the authors (Freudenberg et al. 2017) indicates that tax literacy is higher for those operating small business. However, it is unclear whether this is directly linked to better relationships with professional advisers

or indirectly through experience. Also, it appears that accountants (due to their close involvement with their clients' business operations) are likely to be the adviser with more contact and the initial source for professional advice on tax literacy (Freudenberg, 2017).

Financial literacy research and programs are about capacity building, so that individuals can understand financial matters, seek appropriate information, ask relevant questions and be able to understand the information they are provided (Widdowson and Hailwood, 2007). Gaps between self-assessed financial knowledge and actual knowledge can be a deterrent to seeking out professional advice leading to undesirable financial outcomes (Lusardi & Mitchell, 2006). Advisers tend to overestimate the level of their clients' empowerment (defined as giving the client power through increasing awareness, knowledge and skills) (Hunt et al. 2011); which is problematic in the context of regulatory requirements of the advisers. The ability to improve financial literacy and the professional-client relationship has been explored in prior research, including the role and views of financial planners in combating financial literacy, frameworks for financial education and different models of financial advice based on improving client engagement and financial literacy (Hunt et al. 2011, Blue and Brimble, 2014). However this prior research is almost always in the context of financial planning and there is little, if any, research that extends to accounting, tax and business advisers more broadly.

Given the current regulatory framework around providing both financial and tax advice and the likelihood this regulation will further increase, the initial findings presented in this paper are timely. The perceptions of tax and legal advisers regarding financial capacity building of clients, knowledge of client's levels of financial literacy and means by which capacity building occurs will be important in the context of not only the National Financial Literacy strategy but also for regulators moving forward. This is of particular importance for those clients operating a small business, which make a significant contribution to the economy but face a number of issues in this pursuit.

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Dr Melinda Jone, University of Canterbury

Evaluating Australia's Tax Dispute Resolution System In The Context Of The Australian Taxation Office's Reinvention Program

The world in which we live is rapidly changing. Revenue authorities around the world are thus faced with the challenge of delivering contemporary tax administration that optimises the value of sophisticated technology as well as meeting the ever-rising expectations of taxpayers, the community and governments. Against increasing resource constraints, revenue authorities are consequently implementing projects aimed at transforming their tax systems and tax administrations. These transformation programs address a range of topics, including using new technologies to improve compliance and taxpayer services, redesigning the tax system for increased tax fairness and optimising tax collection. The Australian Taxation Office (ATO) is currently undergoing a broad transformational change program, 'Reinventing the ATO', focused on achieving the ATO's vision of being 'a contemporary, service-oriented organisation'. The Reinvention program also incorporates the ATO's adoption of the Digital by default initiative which requires most people to use digital services to send and receive information to and from, and interact with, the ATO.

Against this background, this paper conducts a dispute systems design (DSD) evaluation of the Australian tax dispute resolution system in the context of the ATO's Reinvention program and the Digital by default initiative, and consequently makes recommendations on the tax dispute resolution system looking forward in the ATO's Reinvention program. This paper finds that the Reinvention program enhances the Australian tax dispute resolution system in a number of ways. However, the benefits of the digital solutions introduced as part of the Reinvention program, including online web chat services, virtual assistance, a digital app and SMS notifications, do not fall equally on all segments of the taxpayer population which the ATO serves. In particular, vulnerable taxpayer groups, such as the elderly, disabled, low-income earners and taxpayers with limited English proficiency, may not receive the benefits of digital tax services due to a 'digital divide' between those with access, and the knowledge and ability to use such services. This paper concludes that it is critical that the ATO conducts research on the service needs and preferences of vulnerable taxpayer groups in order to enhance equity of access to the dispute resolution system and consequently, improve voluntary taxpayer compliance.

Chris Wallis Victorian Bar

Is There A Relationship Between Innovations In Tax Practice And Practitioner Skill

While the Inspector General embarks on “The Review of The Future of the Tax Profession” it is appropriate to reflect on the tax profession at present. University administrations determine course content for accounting (and tax) related degrees by primarily by reference to the requirements of the professional bodies and the Tax Practitioners Board accounting firms are rapidly concluding that they require graduates with the ability to think and analyse rather than graduates content with being able to process.

This changing dynamic raises squarely the old chestnut:

- whether it is a university’s role to provide vocational training?
- whether it is a university’s role to prepare students with a range of capabilities that may be as, or more, relevant to the changing economy than some occupationally specific degrees?

That much of the work on which graduates developed skills in the past is no longer carried out provides the context for this question to be addressed. Computers and or software, or more accurately Artificial Intelligence (“AI”), has replaced the human effort at a practice level. It is as if Moore’s law has been adapted for tax practice.

As electronic payment becomes the norm an ever higher percentage of the work on which graduates developed skills in the past is no longer carried out. Financial Statements can be completed with the press of a button. Too many practitioners lack the skill to conduct research beyond finding a ruling or determination. Whether the ruling or determination is relevant is of no concern. What matters is cutting and pasting a relevant paragraph.

Amended Assessments are issued because auditors regard bench marking as inviolable. The same Amended Assessments are accepted by practitioners who lack the necessary interpretative and analytical skills to contest them.

Unfortunately as AI reduces costs it leads to processification:

- it reduces the opportunity for practitioners to develop skills, particularly interpretive and analytical skills;
- it provides a resting place for those who have either no desire or no aptitude to value add through interpretation and or analysis.

Processification, becoming part of a mechanical process whereby human interaction is forgone for the purpose of efficiency, has ruled unchallenged for too long although there are emerging signs that era is ending within the ATO.

The paper raises the following issues:

- whether those graduates without the ability or desire to value add by interpreting and analysing will remain employable within the tax industry or whether they will become the 21st century version of Melbourne’s tram conductors;
- whether vocational style accounting study has passed its “use by” date?
- whether those students without the ability or desire to value add by interpreting and analysing ought be encouraged to choose another area of study?

<http://theconversation.com/what-role-should-universities-play-in-todays-society-63515>

l.gonzaga@latrobe.edu.au The future of the tax profession

<https://istart.com.au/feature-article/the-process-of-processification/>

Jonathan Barrett Senior Lecturer, School of Accounting And Commercial Law, Victoria Business School, Victoria University of Wellington & Lisa Marriott Professor, School of Accounting and Commercial Law, Victoria Business School, Victoria University of Wellington.

Income Deprivation And Benefits: The Role Of Trusts In New Zealand

Anecdote and the disproportionate number of family trusts in New Zealand suggest that income deprivation is used to facilitate qualification for certain welfare benefits. In this paper, we consider that possibility. We first consider the student allowance, which is means tested on students’ parents’ income; and, secondly, the residential care subsidy (‘RCS’), which tests elderly claimants’ income and assets. We also examine policy, legal, and administrative approaches to income deprivation in relation to these benefits.

Despite plausible anecdote, we find no evidence that parental income is manipulated to gain student allowances. However, while the Ministry of Social Development (‘MSD’) appears to rigorously audit applications for the RCS, the dearth of data collected makes critical analysis of RCS policy and practice with regard to income deprivation problematic. Decision makers’ broad discretion, compounded by MSD’s inability to provide information on the use of that discretion, amplifies the lack of transparency. The findings in this study support the need for a central register of trusts in New Zealand.

Our findings also suggest the presence of structural inequalities in the benefit systems. We observe the lack of coherence in policy that provides universal assistance to the elderly who are in good health, but expects those in poor health to look to their own resources for support. We also note the anomalous policy outcomes when autonomy is respected for unemployed young people, but not for young people who are studying.

Dr Thea Voogt, Lecturer, TC Beirne School of Law, The University of Queensland

Income Tax And Trust Law Perspectives Of The Practical Disregard Of Legal Form In Discretionary Family Trading Trusts

Estimates are that 70 per cent of all businesses in Australia are family owned. In small family businesses, participants focus on generating sufficient cash to fund working capital and to pay their personal expenses. Relying on the underlying social construct of a family business, family members justify their entitlement to business-generated cash by arguing that it is the family group that bears the entrepreneurial and trading risk. Objectively, their right to cash is constrained by the nature of their ownership rights and by the legal form they adopt to conduct the business.

This paper investigates the complexities that arise when family members use business funds to pay for their personal expenses, focusing on uncomplicated flat small family business structures that incorporate a discretionary trading trust. In particular, the paper presents income tax law and trust law perspectives of family member access to business-generated cash, investigating whether they consider and apply trust law principles when they take business-generated cash for private purposes and when they determine their income tax liability arising from the business.

The paper begins by reflecting on the social construct and features of family businesses in Australia and the importance of self-funded working capital. Secondly, the paper considers the legal forms adopted to conduct a family business and the role that income tax plays in a family's choice of business form. Third, the principles applied to tax family business income are considered using the vantage points of ownership rights, employment entitlements and family maintenance payments. In the fourth section, attention turns to the nature of trust law entitlements and beneficiary rights to cash in discretionary trusts. Three questions are considered: who are the trustees, how often can they exercise discretion, and which formalities are required to evidence appropriate and reasonable discretion. The validity of three alternate beneficiary arguments to justify their access to cash outside of the ambit of trustee discretion is also discussed. The remainder of the paper focuses on income tax law and considers how family groups rely on trust law principles to minimise their aggregate income tax. In turn, the paper considers the principle of income splitting, present entitlements compared to access to cash, and how present entitlements, entitlements to income of the trust estate, access to trust cash for personal purposes and unpaid present entitlements are dealt with from an accounting and income tax perspective.

The paper concludes by reflecting on: the practical disregard of the essential legal form of a discretionary trust to enable ongoing family member access to cash, the family's reliance on trust law to justify income splitting to minimise income tax across the family group, the misclassification of access to cash prior to trustee discretion as drawings or loans, and how notional present entitlements often bear little resemblance to a lower practical access to cash. The resulting inconsistencies between access to cash, taxable income and accounting records underscore the continued and contemporary debate that regulatory reform of discretionary trading trusts is long overdue and necessary in Australia.

Walpolo, Sonali, Lecturer Research School of Accounting, Australian National University

The Taxation Of Capital Gains In Trusts After Bamford: Despite The Complexity, Are the 'Interim' Measures Achieving Their Purpose?

The 2011 'interim' measures to the taxation of capital gains in trusts (in Subdivision 115-C ITAA97) were a response to the High Court's decision in *Commissioner of Taxation v Bamford* (2010) 240 CLR 481 ('Bamford').

In *Bamford*, the High Court clarified that a beneficiary's present entitlement to the 'income of the trust estate' in Division 6, Part III of the ITAA36 referred to the distributable income of the trust according to trust law concepts and the trust deed. Importantly, the court held that a beneficiary's proportion or percentage share of trust (distributable) income is also used to determine their share of the trust's taxable income (the so-called 'proportionate' approach). Under the *Bamford* 'proportionate' approach, as a beneficiary is allocated a percentage of the trust's total taxable income (which might include both ordinary income and capital gains), the government considered that the streaming of particular kinds of trust income to specific beneficiaries would not be tax effective, on the reasoning that a beneficiary's share of assessable income could comprise a 'blended amount of all different types of income and capital gains included in the trust's taxable income.'

The purpose of the 2011 'interim' amendments was to ensure that the streaming of capital gains (as well as franked distributions) to specific beneficiaries would be effective for tax purposes, and ostensibly, to address 'key anomalous outcomes' in the taxation of trust income said to be revealed by *Bamford*, as where a beneficiary is assessed for tax on amounts that are different to that which they are entitled to receive.

It was intended that the 'interim' measures be appraised after a broader review of the taxation of trusts. This has not yet taken place, and as some have suggested, the 'interim' measures appear to be permanent for the foreseeable future. Although the explanatory memorandum to the interim measures claim that they are intended to 'improve the taxation of trust income,' the provisions are extremely complex with numerous steps, some of which do not appear to be intuitive. In 2011, the Tax Institute suggested an 'inability to understand the law' among practitioners. Some years later, in 2015, A 'Trust Streaming Manual' published by CPA Australia described the provisions as 'causing significant confusion' among the membership. Reflective of the complexity of the provisions, leading Australian taxation texts have variously described the taxation of capital gains in trusts as either 'beyond the scope' of the relevant text or have replicated the explanatory memorandum in outlining the operation of the provisions.

This paper evaluates the 'interim' streaming regime against its professed objectives. It examines whether the streaming provisions are less likely to lead to anomalies compared with the previous law and other plausible alternatives, and also considers whether the statutory purpose of ensuring tax effective streaming could be achieved by means of a simpler process. Judicial analysis of the streaming provisions is also examined.

PARALLEL SESSIONS 2: - Thursday 17th January 2.30pm – 3.30pm

John Minas Lecturer, Griffith Business School, & Norman Hanna Pitcher Partners, Brisbane Has 'Permanent Place Of Abode' For The Purpose Of The Domicile Test Been Redefined?

This paper considers the application of the domicile test for taxpayer residency in the case of *Harding v FC of T* (2018).¹ The domicile test is relevant to individual taxpayers with an Australian domicile. Under the test, taxpayers who have their domicile in Australia are considered residents of Australia unless their 'permanent place of abode' is outside of Australia. The case of *FCT v Jenkins* (1982) found that a taxpayer with an Australian domicile had established a permanent place of abode outside of Australia and that, consequently, they were a non-resident during the relevant income years. Although the taxpayer in *Jenkins* had maintained a residence in Australia during their absence, they did not have a definite intention to return to Australia at that time. According to the decision in *Jenkins*, the fact that the taxpayer in *Harding* maintained a residence in Australia would not preclude him from being a non-resident. The finding that he remained a resident of Australia rested on his failing to have established a permanent place of abode in another country. As was the case for the taxpayer in *Jenkins*, the taxpayer in *Harding* does not appear to have turned his mind to returning to Australia. It appears that the style of accommodation that the taxpayer in *Harding* occupied outside of Australia was one of the factors that led to the conclusion that he did not have a permanent place of abode and was, therefore, a resident of Australia. The paper considers to what extent the requirements for establishing a 'permanent place of abode' need further clarification and ways that this may be achieved.

**Currently on appeal*

Sunita Jogarajan Associate Professor Melbourne Law School

'A Review Of The Permanent Establishment Article In Australia's Tax Treaties'

Bilateral tax treaties have been the subject of much attention recently in light of the G20/OECD project to address base erosion and profit shifting. The OECD's 'Final BEPS Package for Tax Reform of the International Tax System to Tackle Tax Avoidance' published in 2015 proposed fifteen action items to address the issue. Of relevance to this paper are Action Items 7 and 15 regarding 'preventing the artificial avoidance of permanent establishment status' and 'developing a multilateral instrument to modify bilateral tax treaties' respectively. As of August 2018, Australia is a party to forty-five bilateral tax treaties which are in force. The oldest of these treaties which has continued without amendments is almost forty years old – the treaty with Philippines which entered into force on 17 June 1980. The most recent is the treaty with Germany which entered into force on 7 December 2016. Australia has been an active member of the OECD with regard to work on base erosion and profit shifting and was one the first signatories of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ('Multilateral Instrument') on 7 June 2017 along with 35 of Australia's bilateral tax treaty partners. On 16 August 2018, the Treasury Laws Amendment (OECD Multilateral Instrument) Bill 2018 was passed by both Houses and now awaits Royal Assent. The Bill amends the International Tax Agreements Act 1953 to give legislative effect domestically to the Multilateral Instrument. This paper proposes to first review the permanent establishment article contained in Australia's forty-five current tax treaties. The paper will then examine the impact of the OECD's measures targeting base erosion and profit shifting on Australian practice regarding the definition of 'permanent establishment'. The preliminary conclusion is that the research indicates that the Multilateral Instrument does not address all Australian tax treaty issues and individual tax treaties will continue to require updating to target base erosion and profit shifting.

Diane Kraal (Monash Business School), Victoria Haritos (Faculty Of Engineering) & Rowena Cantley-Smith (Law Faculty) Monash University.

Re-Thinking Biofuels In Australia: An Analysis Through The Lens Of Energy Law And Policy

Investment is needed to promote the important role of biofuels in the transition of the Australian energy market towards a sustainable future. Appropriate policy, laws, and regulations are essential drivers of such investment and the ultimate success of the Australian biofuels sector.

To achieve this end, our aim is to contribute to the progression of Australia's policies and laws on biofuels. Thus we re-think the outcomes of major technical studies on biofuels published in Australia between 2007 and 2014 as well as the latest developments in first generation biofuels, such as ethanol and biodiesel. We also examine selected biofuel development in the EU. Given the outcomes of these types of studies have been generally evaluated on the basis of economic benefit, the purpose of our revisiting these publications is to widen the analysis to include environmental and political considerations.

This inter-disciplinary research uses mixed methods to address a number of questions. Are there further technology breakthroughs needed? What is still valuable in the previous biofuels studies? Can current developments on biofuels be transitioned to policy in Australia?

These questions have been developed by reference to the advanced state of biofuels, policies and law outside of Australia, and the contention that economic benefit is no longer considered the sole criteria for evaluating non-renewable and renewable energy projects.

The method of narrative is used to piece together the outcomes of major technical studies on biofuels published in Australia between 2007 and 2014 as well as the latest developments in first generation biofuels, such as ethanol and biodiesel. We also describe the state of biofuel energy policy in Australia and make comparisons to the policies of a selected EU country.

Research and development of biofuels technology has continued strongly in the USA, Europe and Asia over the past decade, much of it aimed at increasing sustainability and lowering costs of fuel production. The research undertakes a systematic review of this activity and conclusions are drawn as to the technology readiness and greenhouse gas mitigation of the leading options in this field. This technical review of biofuels development will inform the policy and legal reviews undertaken as part of the project.

To discuss the research findings on biofuels, our analytical framework is energy justice theory. This theory provides a decision-support tool for energy regulation by policy-makers to balance the energy trilemma of competing aims: economics (finance), environment (climate change mitigation and biodiversity protection) and politics (energy security).

The energy justice concept is operationalised through eight core principles: availability, affordability, due process, transparency and accountability, sustainability, intra & inter-generational equity, and responsibility – all of which have a resonance for the biofuels industry.

Alexander Robert ('Lex') Fullarton Adjunct Professor Curtin Law School

A Tale Of Two Taxes: Clean Energy Act 2011 (Cth) V Renewable Energy (Electricity) Act 2000 (Cth)

Firstly, this paper defines a tax to establish a definition of a carbon tax and then examines the *Clean Energy Act 2011 (Cth)* (CE Act), which is considered to be a carbon tax. Secondly, it examines the *Australian Renewable Energy (Electricity) Act 2000 (Cth)* (REE Act) to ascertain if it functions as a tax on greenhouse gas emissions and is therefore also a carbon tax. It examines both pieces of legislation to compare and contrast them to establish the view that the REE Act is not a quota based system to limit greenhouse gas emissions (a 'cap and trade' system) but rather it is a carbon tax system.

To do that the paper investigates various definitions of tax. It compares those definitions with the legislative intent and functions of the REE Act to answer the question – is the REE Act a carbon tax system? It concludes that the provisions of the REE Act function as a form of carbon tax.

It also concludes that tax revenue, sourced from an excise on fossil fuel generated electricity, is specifically directed by government to a particular purpose – the revenue is hypothecated to support the burgeoning renewable energy industry in Australia.

The REE Act taxing system functions by the creation of renewable energy certificates (RECs) by the operators of registered renewable energy generation installations. The RECs are intended to be surrendered as 'tax tokens' or coupons by the suppliers of fossil fuelled generated electricity.

The RECs are subsequently traded on a market to any party registered to trade on a government supervised electronic market place – the Australian rec-registry. They can be, and often are, traded as a form of commodity speculation prior to surrender. However they are ultimately purchased by suppliers of fossil fuelled generated electricity to be surrendered to government agencies.

Surrendering RECs is the only means by which the suppliers of fossil fuelled generated electricity can meet their commitments under the provisions of the REE Act. A fiscal penalty is applied for any shortfall or non-compliance in the number of RECs surrendered and no payment is made by government agencies for the surrendered RECs.

A REC, purchased at a variable market value dependent on the economic forces of supply and demand, becomes a token or coupon for the payment of tax. The supply of RECs is dependent on the volume of electricity generated by registered renewable energy generation installations. The demand for RECs is created by the level of the renewable energy target as set annually by the Parliament of Australia.

As operators of renewable energy generation installations are the only parties which can create RECs, and suppliers of fossil fuelled generated electricity are obliged to purchase RECs to meet their tax commitments the transfer of RECs subsidises Australia's burgeoning renewable energy industry.

**Nthathi Rametse, Senior Lecturer, School Of Management, RMIT University Appadu
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Taxation, Swinburne University Of Technology**

Start-Up Compliance Costs Of The Malaysian Goods and Services Tax For Small And Medium Sized Enterprises

The implementation of Goods and Services Tax (GST) in Malaysia on 1 April 2015 was part of Malaysia's reformation of their tax system aimed at improving the collection of revenue and reducing the country's budget deficit. GST is a broad based consumption tax, levied at 6 per cent in Malaysia, with most food zero-rated (GST free). This study examines small and medium sized Enterprises' (SMEs) cost of implementing the GST in Malaysia for the period up until 30 March 2015. The research particularly assesses the magnitude of the implementation costs of a new tax, thus contributing to the compliance costs literature. A survey of sixty eight (68) SMEs undertaken in June 2016 estimated the start-up compliance costs at RM201,831.05 per SME. Internal costs, estimated at RM137,399.26 represented 68 per cent of total start-up compliance costs, while external costs, reported at RM64,341.79 comprised 32 per cent of total start-up compliance costs. Although most of respondents (42.6 per cent), supported the government's taxation reform, a majority of these enterprises (50 per cent), found GST unreasonably complicated, hence resented doing GST work (41 per cent). Despite the high GST start-up compliance costs, SMEs also identified potential managerial benefits derived from improved accounting information system available for day to day business decisions (88.3 per cent), improved controls to prevent theft and fraud (70.6 for the implementation per cent), savings in accounting costs as a result of using internal staff to keep records (60.3 per cent) and better accounting information forecasting cashflow and profit (72.1 per cent). This investigation concludes with a discussion of policy implications for the Malaysian GST system, particularly those that would alleviate SMEs' compliance burden.

**Binh Tran-Nam, School Of Taxation & Business Law, UNSW & Phuong Lien Nguyen, Hoa Sen
University, Viet Nam**

The Impact Of Tax Rate, Compliance Burden And Governance On Tax Effort: Evidence From Emerging Asian Countries From 2004 To 2015

As low-income countries become more developed, the demands for publicly provided goods and services in these countries tend to increase. This in turn puts pressure on those countries to raise their tax revenue collections both in absolute terms and relative to GDP. The present article seeks to determine the quantitative impacts of tax rate, compliance burden and tax administrative governance on tax collection ratios of 14 emerging Asian countries (Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Malaysia, Mongolia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, and Vietnam) over the period from 2004 to 2015.

Conventional econometric studies of tax collection ratio tend focus on two sets of factors: economic variables (GDP per capita, non-agricultural share in GDP, trade openness, etc) and socio-political factors (corruption or political stability). Unlike those studies, the present article seeks to explain tax collection performance of the chosen countries in terms of tax policy and administration variables (such as tax rate, tax compliance burden and tax administrative governance) and macro and trade indicators (such as inflow foreign direct investment (FDI)). The proxies for those regressors are obtained from a variety of secondary data sources including PwC Paying Taxes, World Bank's World Development Indicators and Worldwide Governance Indicators.

Using the two-step generalised method of moments, the empirical results indicate that tax rate, control of corruption (as a proxy of tax administration governance) and inflow FDI individually have statistically significant beneficial impact on tax collection ratio whereas tax compliance burden significantly and adversely affects tax collection ratio. These findings suggest that, for Asian developing countries at least, tax simplification or governance enhancement can play a positive role in improving their tax revenue performance.

Michael Walpole Professor, School of Taxation and Business Law, UNSW

The Placer Dome Case And Advances On Murry

Goodwill is often the most valuable asset in small business, it is also important in big business. It is specifically included by s 108-5 ITAA97 in the property subject to CGT and the state governments have long recognised it as part of the (stamp) duty tax base. This paper reviews, the state of play in the relationship between goodwill and the business. Whereas the Costello era tax reform took much income tax heat out of dealing with goodwill by extending the CGT discount to all small business assets, and the High Court's 1998 *Murry* decision gave more clarity at an income tax level - goodwill remains critically important in the tax bases of the Commonwealth and of the States and several problems of interpretation and application remain. This paper reviews our understanding of goodwill, its meaning and characteristics in light of the High Court's pronouncements on goodwill post *Murry* in the 2018 case of *CSR (WA) v Placer Dome Inc.*

John Azzi Senior Lecturer, School of Law, Western Sydney University

Preserving the Constitutional Function of Courts and Increasing Confidence in The Tax System: Time to Re-Consider *Futuris*

Focusing on the discretionary power to amend an assessment at any time where the Commissioner is "of the opinion there has been fraud or evasion", this article argues that the increasingly prevalent practice in the Federal Court of summarily dismissing judicial review applications not alleging either of the two jurisdictional errors identified by the plurality in *FCT v Futuris Corporation Ltd* (2008) 237 146, is both apocryphal and repugnant to the rule of law.

As will be shown, the current practice together with the serious limitations inhering in the statutory scheme for overturning an excessive assessment combine to render the tax practically incontestable; in turn reducing confidence in the tax system and striking an unfair balance between preserving the capacity of the Taxation Office to collect "legitimate income tax liabilities"¹ and taxpayer rights to petition courts to overturn an assessment purportedly made beyond power.

1. Treasurer, Peter Costello, Press Release (No. 098), 24 November 2003.

PARALLEL SESSIONS 3: - Thursday 17th January 3.50pm – 4.50pm

Shafi U Khan Niazi, Monash Business School, Monash University

Taxing The Digital Economy In Europe: The Proposed EU Legislation For Corporate Taxation Of Significant Digital Presence

The article examines the proposed EU legislation on issues concerning the "taxable presence" of businesses in the arena of digital economy. Traditionally, the concept of permanent establishment (PE) has long remained - and still is - a significant tool of international tax rules to determining the economic and taxable presence of businesses in a jurisdiction. The traditional PE notion (e.g. Art. 5 of the OECD Model Convention) draws largely on the physical-existence indicators of the enterprise in a jurisdiction for allocation of taxing rights to that jurisdiction. The existing PE concept, however, does not consider the digital environment where cross-border economic activities may take place without physical presence of enterprise, raising tax issues as foreseen under Actions 1 and 7 of the OECD/G- 20 BEPS plan.

The proposed EU law focuses this realm. It aims at addressing the rising challenges to taxing the digital economy in the European single market. The draft law views that the existing international tax rules conceived some hundred years ago are largely based on the concept of physical presence of traditional "brick and mortar" business models that fail to capture the taxable presence of digital enterprise. The proposed law attempts to provide solution to the challenges posed by the rapidly changing business models of the digital arena in the EU single market.

The proposed EU law considers new indicators to determine the taxable presence of digital enterprise that otherwise do not require physical existence to carry out transnational business. In this context, the draft law sets out new rules to establish the taxable nexus of cross-border digital businesses and offers a concept of "significant digital presence" to extend the definition of PE in European Member States. To determine the attribution of profits, the proposed rules take into account the functional analysis and consider the economic activities performed by the significant digital presence incidental to the development, enhancement, maintenance, protection and exploitation of the intangible assets of the enterprise. This article dissects the key provisions of proposed law and discusses its wider implications with a particular focus on the EU single market.

Clayton's Business Warehousing and Profit Tax

Prafula Pearce Senior Lecturer & Dale Pinto Professor Curtin Law School, Curtin University

Global Warehouses have evolved with the growth of e-commerce. In Australia and around the world, many warehouses with state of the art facilities have been established that makes it possible for foreign entities to do business in Australia without creating physical presence, i.e. a Clayton's business. This paper explores whether Australia is losing out on collecting the tax revenues from the profits generated by such businesses in Australia. The paper also explores whether the recent changes to the definition of Permanent Establishment in the OECD Model Tax Convention are sufficient to capture the required tax revenues in Australia, or whether a Destination Based Tax would benefit Australia in the long run.

Roberta Mann, University Of Oregon School Of Law; Fiona Martin, Taxation and Business Law UNSW; Bill Butcher, Taxation And Business Law UNSW

How Might Corporate Tax Rates Affect Corporate Environmental Social Responsibility?

A growing literature has developed on the topic of enforcement crowding out altruism.¹ This literature may apply to the idea of corporate social responsibility. If the government requires social responsibility, by imposing a carbon price or by otherwise increasing tax liabilities to pay for social goods, does that reduce the corporate social response? Similarly, would reducing regulations and corporate tax liability increase the social response? The U.S. and Australia have significant differences in corporate taxation under 2017 law. Post-2017, the U.S. is moving closer to Australia in its corporate tax rate and also in its international tax system.

Australia is also considering reducing its corporate tax rate. In both the U.S. and Australia, corporations use tax strategies to reduce their effective tax rates (ETRs). The U.S. and Australia both face environmental challenges and government response to those challenges may be lacking. Investors increasingly expect corporations to perform on environmental, social and governance metrics.

Using a case study approach, we examine whether low corporate tax rates appear to encourage firms' investment in sustainability. We compare selected U.S. and Australian multinational corporations (MNCs) on ETR and CSR. As companies in different industries face different ETRs, we select companies in different industries. According to analysis by the New York University Stern School of Business, multinational corporations in the retail industry face a relatively high ETR (34%) while enterprises in the coal (5%) and information technologies sectors (16%) face lower ETRs. We will examine corporate sustainability reports and data on ETRs of selected companies and attempt to draw conclusions on characteristics of companies that score well on environmental CSR and how these companies are affected by the legal and tax systems under which they operate. We will compare the U.S. and Australian systems, identify best practices, and offer recommendations for reform.

1. See, e.g., Roland Benabou and Jean Tirole, Incentives and Prosocial Behavior, 96 Am. Econ. Rev. 1652 – 1678 (2006). Daniel Ariely, Predictably Irrational (Publisher Date) (discussing the social contract vs. the market contract and the daycare situation)

Ken Devos Associate Professor Faculty of Business and Law Swinburne University of Technology

Access To Housing Benefits Under Dwelling Scarcity: Implications Of Increasing The Housing Benefit Tax In PNG

Urban Papua New Guinea (PNG) suffers from one of the highest housing-price-to-income ratios in world (90:1 in Port Moresby) where historical and structural factors that limit private ownership contribute to extreme housing scarcity in urban areas. Yet, provision of affordable housing is a challenge for governments in many countries where house prices have increased in response to housing shortages. The flow-on effects of increased expenditure on dwellings as a portion of the household budget has been associated with negative outcomes such restricted access to food, clothing, health care and education for low income households in particular, as well as lower overall standards of living overall. As is the case in PNG, alongside strong trends towards urbanization, the lack of affordable housing has commonly led to development of informal urban settlements that lack basic services, infrastructure and security, seeding future social and economic inequality and presenting barriers to long term economic development.

The high relative cost of housing in PNG has traditionally incentivised institutions to provide housing benefits to employees as part of their remuneration and as part of a social contract entered between employers and employees, helping employees meet their housing needs and signalling job security in return for enhanced productivity. These fringe benefits are received in the form of either a housing allowance (cash assistance) or as direct provision of accommodation (owned or rented by the employer), the latter of which is concessionally taxed.

However, as a result of a recent increase to the housing benefits tax announced in the 2017 National Budget, the response from the public has been mixed at best. Consequently, with the assistance of funding received from the National Research Institute (NRI) in PNG, collaboration with Australian researchers was established to conduct a national survey and provide a subsequent report with regards to the fairness of increasing the housing benefits tax.

This paper examines the impact of the diminished concession of employer provided housing on equity grounds. In particular, the paper explores the characteristics of those who receive these housing benefits (and those who did not) with the aim of assessing the overall impact of the tax change upon both horizontal and vertical equity. The research would be of interest to both the NRI and PNG government and has potential tax policy implications.

Common Law Tax Avoidance Arrangements V Civil Law Tax Abuse

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

Many Nations have sought to tackle the problem of tax avoidance through General Anti-Avoidance Rules ('GAARs') rather than relying solely on specific Anti-Avoidance Rules ('SAARs'). New Zealand and Belgium are two such Nations. However, the history of these GAARs, the legislative framework and the role of the judiciary could not be more diverse. The New Zealand GAAR (ss BG1 and GA1 *Income Tax Act 2007* ('ITA 2007')) can be traced back to s 40 *Land and Income Tax Assessment Act 1891*. By contrast, Belgium introduced its first GAAR in 1993 (article 344, §1 BITC). While each is based on the broad legislative goal of combatting tax avoidance, the strategies underpinning each piece of legislation differ.

The New Zealand legislation revolves around the notion of a "tax avoidance arrangement" that is in turn defined in very broad expansive terms that cast a wide net. By contrast, even the redrafted (2012) version of the Belgium GAAR is very narrow and is confined to cases of "tax abuse". For the New Zealand GAAR to apply an objective test is applied and if it is determined that merely one of the purposes or effects of the arrangement is tax avoidance the GAAR is triggered unless it is considered merely incidental. The legislation reinforces the reach of the GAAR in this regard by reiterating that the requirement of a tax avoidance purpose or effect may be satisfied "whether or not any other purpose or effect is referable to ordinary business or family dealings."

For the Belgium GAAR to apply both an objective and subjective test must be satisfied. Objectively the taxpayer must obtain a tax advantage, but it must also be determined that the taxpayer's subjective and exclusive intent was to obtain that tax advantage. Further, in stark contrast to the New Zealand GAAR, if the taxpayer proves that the transaction was justified for non-tax reasons, the GAAR will not apply. In New Zealand the courts play a significant role in developing the relevant principles to determine if arrangements amount to tax avoidance. In *Ben Nevis Forestry Ventures Ltd & Ors v Commissioner of Inland Revenue* the Supreme Court noted that Parliament specifically chose "not to specify with any particularity the kind of arrangements to which [the GAAR] would apply" leaving this "to the courts to work out." By contrast, under the Belgium Constitution taxes can only be introduced by legislation. There is no room for judge-made anti-avoidance doctrines and concepts.

This paper critically evaluates each GAAR to determine which approach (anti-avoidance v anti-abuse) is preferable. It also compares and contrasts the role of the judiciary in each jurisdiction.

Kalmen Datt, Senior Lecturer, School of Taxation and Business Law UNSW;

Tax System Integrity

The level of risk, including tax risk, a company is prepared to take in achieving its goals is determined by its board of directors. The greater the tax risk appetite of a company, the greater the risk of the regulators consideration of its affairs. Actions from the regulator can result in penalties and possible criminal sanctions against both the company and its directors under the tax laws.

The obligations of directors are exacerbated by a multitude of external factors outside their control. These include treaties and legislation with a view to dealing with issues arising out of the Base Erosion and Profit Shifting process which for purposes of this article are those dealing with exchange of information.

In view of the above does the ability of the tax regulator to interrogate massive quantities of information almost instantaneously (something humans are incapable of doing) from sources throughout the world impact on the risk faced by directors of breaching both the tax laws and the Corporations Act. The paper concludes that the increasing use of data analysis and the increasing sophistication of these techniques to inter alia determine risk is problematic for corporations and their directors. The article reviews possible actions corporations may take to limit risk and if necessary challenge the acts of the ATO. These remedies are limited and raise their own problems.

Norman Hanna, Pitcher Partners, Brisbane, Queensland and Dale Boccabella, School of Taxation and Business Law UNSW

Franked Distributions “Passing” Through Closely Held Trusts: Analysis Of Selected Problems And Solutions Where Related Expenses And/Or Other Trading Losses Exceed The Distribution

From commencement of the imputation system in 1987, fixing on the correct tax treatment when a trust has franked distributions where related expenses and/or other losses exceed the franked distribution, has been problematic. Questions as to whether an entitled beneficiary is to be taxed on the franking credit amount (gross-up) and whether the beneficiary can access the related franking credit tax offset are central issues. Co-ordinating the franking rules with the normal trust rules only adds to the difficulties. These problems still exist under the “new” Subdivision 207-B, which operates in tandem with the normal Division 6 regime as modified by the new Division 6E. This article draws out the issues, analyses the relevant provisions, identifies outstanding anomalies and suggests solutions. Case studies are used to assist with this endeavour. The conclusion of the article is that there are some difficult interpretative issues and there is potential for unwarranted over-taxation of a beneficiary.

Ann Kayis Kumar Senior Lecturer, and C John Taylor Professor, School of Taxation and Business Law, Business School, UNSW Sydney

The Application Of Capital Gains Tax To Trusts In A Changing World: Practical Issues And Proposals For Reform

Trusts are a major (some would say dominant) form of business structure in Australia. Despite, or perhaps because of, their significance longstanding policy, conceptual, technical and practical problems in their tax treatment remain to be resolved. The variety of types of trust, the differing nature of trust beneficiaries interests, the changing nature of relationships between the trustee, the beneficiary and the trust property throughout the trust lifecycle are some of the general law features which make taxation of trusts problematic.

Problems in the tax treatment of trusts are no more evident than in the application of capital gains tax to trusts. The nature of the trust beneficiary's interest in trust assets and the changing nature of that interest in the trust lifecycle raise conceptual and technical issues in taxing capital gains derived through a trust. The fact that income and capital beneficiaries may differ and that a trust must ultimately vest raise policy and technical difficulties as to who should be taxed on a capital gain derived through a trust and when they should be taxed. The existence of capital gains preferences and a policy intent that some of these at least be enjoyed by trust beneficiaries raise technical and practical issues as to how this policy intent can best be achieved.

After tracing the history of Australian legislative provisions and reform proposals dealing with the application of capital gains tax to trusts this paper explores the underlying causes of problems that remain in the application of capital gains tax to trust and proposes legislative solutions to them. Noting that similar problems generally do not exist with the taxation of capital gains derived by companies the paper proposes imposing that capital gains be taxed at the corporate level with distributions to beneficiaries being deductible to the trust and assessable to the beneficiary. The paper examines how this overall model would apply to derivations and distributions capital gains and capital gains preferences at various phases of the trust life cycle in different types of trust.

PARALLEL SESSIONS 4: - Friday 18th January 10.15am – 12.15pm

Alex Evans, Lecturer, School Of Taxation & Business Law, UNSW Business School

A New Socratic Method For Australian Law Schools In The 21st Century

The socratic method is a tradition in North American law schools, but it is not widely used in Australian law schools. The socratic method is a didactic process involving the teacher asking one student a series of questions, often until their knowledge is completely exhausted, before moving onto the next student. The method gives the teacher control and the student's learning process is heavily dependent on the teacher and the teacher's line of reasoning. While the method is regarded as teaching intellectual rigour and preparing students for practice in the US, it has been heavily criticised and the criticisms are substantial.

The paper begins by examining the merits and criticisms of the socratic method. The paper then poses the question – how can Australian law schools achieve the benefits of socratic style teaching without the negative consequences that are apparent in US literature? The paper proposes one method, as a way forward, that the author has developed in the online context drawing on her experience with socratic method done extremely well at Harvard Law School in 2013. Broadly, the new method is a more student-focused style that combines a version of socratic method with aspects of constructivism and of a flipped classroom.

The paper outlines what this new method involves practically and how it draws on each of those teaching theories. The paper argues that the new method achieves the positive aspects of socratic style (i.e. the intellectual rigour) without the negative consequences (i.e. the potential humiliation, the suppression / silencing of women in particular and creating such a teacher centric experience).

A fundamental part of the new method is that it sets a very high standard in the level of preparation and interaction expected from students and puts students more in control of and gives them more autonomy over their learning. The paper explains how the author creates this expectation practically. The paper uses the author's recent teaching evaluations to demonstrate that this style is highly effective with students. While the author developed the new method in the online context, it could easily be applied in face to face classes. It also has broad application. Although it was developed and has been effective in teaching tax subjects, the paper argues the method would be highly effective in teaching core subjects in Australian law schools.

Ian Murray, Jared Clements, Melissa Cianfrini and Nicole Wilson-Rogers: University of WA

Taxation, Innovation and Education: Reflections on a Flipped Classroom

In recent times the use of flipped classrooms in tertiary education has become more common. This paper considers the use of a flipped classroom structure in delivering the taxation unit Taxation Law 2206 as part of the business law major. 2206 is a large core unit that considers the basic concepts and fundamentals of Australian taxation law. Delivery of the unit has been changed from a didactic lecture/tutorial model to a blended learning or flipped classroom. The current delivery mode includes a combination of short videos, online reading materials, online learning activities, in-person workshops and tutorials. This paper takes the form of a longitudinal study which reflects on the reasons for changing the delivery mode, how change was implemented and the effectiveness of the change. In particular the paper will examine the key issues in developing and implementing this type of delivery mode. The paper will also examine data, including student feedback, from 2013 – 2018 to highlight variations in class attendance, usage of online resources, overall results and student satisfaction.

Anna Mortimore, Lecturer Griffith Business School, Ann Kayis-Kumar Senior Lecturer School of Taxation and Business Law UNSW

Tax Teaching Implications Of The 10-Second Tax Return: Educating And Equipping The Next Generation Of Tax Professionals

Those who specialise in tax increasingly pitch their service offering at the more complex end of the taxpayer spectrum, matching the ATO's own strategy under its Reinvention Project. This has long been the client service area where Chartered Accountants and Certified Practising Accountants tend to derive their premium fees.

As digital technologies and platforms emerge and augment, there may be a heightened need for tertiary institutions to take a more proactive approach to equipping students by identifying and addressing the implications of these advances from both a curriculum design perspective and a graduate employability perspective.

This paper commences with a review of the literature relating to the future of the tax profession. This is followed by a comparative analysis of whether, and if so how, tax teaching has adapted to one of the 'holy grails' of tax administration; namely, Prepopulated Personal Tax Returns (or 'the 10-Second Tax Return') in eight (8) OECD jurisdictions currently utilising such systems; namely, Chile, Denmark, Estonia, Finland, Iceland, Norway, Spain and Sweden.

As tax administration changes with technological developments, so too will the role of tax professionals and – in turn – tax teachers. It is hoped that this research offers useful lessons learnt from the overseas experience of adapting tax teaching to technological change.

Steven Stern, Adjunct Professor, College Of Law And Justice, Victoria University

Taxation, Innovation And Education: Tax In A Changing World: Ramifications Of Change For The University Sector

This paper seeks to identify the ongoing unique institutional characteristics of universities which might support continuation of their tax benefits, as "bodies politic and corporate" responsible for the undertaking of scholarship, pure and applied research, invention, innovation, higher education and consultancy of an international standard and standing, and for providing supporting and complementary vocational education and training programs.

Universities commonly aim for excellence in their education and research. They aim to enrich their global, national and regional communities through the skills of their academics and graduates. Universities provide the facilities and other support for their staff and students to pursue innovative research and build outstanding research records. They often must elevate public awareness of educational, scientific and artistic developments; and promote critical and free enquiry, informed intellectual discourse and public debate, both internally and in the wider society. They forge close links with the wider academic world, the professions, industry, and commerce. They seek to attract academic staff and students of the highest calibre. Universities extend many and varied opportunities to further life-long learning.

Universities commonly are chartered to provide programs and services in a way that reflects principles of equity and social justice. However, they also have to utilise and exploit their expertise and resources, including commercially. In this commercial environment, universities may be evolving from public institutions of higher education and research with a dominant charitable purpose (attracting taxation exemptions and income tax gift deductibility status), into multinational commercial enterprises in competition regionally, nationally and globally. Moreover, there has been the growing impact of the privatisation of tertiary education as commercial enterprises within a competition policy framework. Privatisation and commercialisation raise whether public universities should continue automatically to attract tax benefits which do not seem to be so readily enjoyed (at least without some fairly intricate and expensive tax planning) by their private competitors.

The concept of charity traditionally has connoted the relief of some form of necessity which excites the benevolence of people to provide such relief. Charity has encompassed the provision of relief associated with the maintenance of scholars in universities. This concept of charity lies at the foundation of the tax benefits traditionally conferred on universities, which continue to the present day. Given current competition policies, it might be questioned whether such tax benefits to universities are still in the public interest or are compatible with a level playing field.

The Australian National Audit Office in its report to the Parliament dated 20 December 2016 on the *Vocational Education and Training FEE-HELP Scheme* found that, due to “some unscrupulous private training organisations”, the privatisation and commercialisation of tertiary education did not necessarily deliver a win-win to students and taxpayers, even being disastrous for government coffers. Contracting out services such as cleaning and garbage collection might save money, but is not necessarily money-saving for other activities or suitable to achieve other outcomes. This kind of finding can support continuation of the tax benefits to public universities.

Fei Gao The University Of Sydney

Will Profit Split Method Be A Powerful Anti-BEPS Weapon?

It is well known that many multinational enterprises (“MNEs”) have successfully shifted profits from market countries to low-tax jurisdictions. The profit split method has been hailed as a possible solution to the problem. On 21 June 2018, the OECD released the final report on the method under the BEPS project: Revised Guidance on the Application of the Transactional Profit Split Method. This is the fourth paper/report the OECD has released on the topic in the past four years, which highlighting the difficulties in achieving international consensus on for the profit split method, as well as the growing interest in this method.

One of the important aspects of the revised guidance is the incorporation of some of the controversial positions of developing countries, such as China. For example, there may be more scope for market countries to apply the profit split method, which may have significant impact on the international allocation of profits of MNEs. The revised guidance stipulates that if an MNE group member perform extensive marketing functions to other group members it may be regarded as making “unique and valuable contribution”, thus rendering the profit split method the most appropriate transfer pricing method.

These changes provide authority for emerging market economies like China to apply more readily the profit split method to challenge the transfer pricing arrangements of MNEs, which may result in more profits being allocated to those countries.

This paper provides a critical analysis of the revised guidance and a comparison with China’s position on the profit split method, aiming to provide insights into two key structural elements of the method: when a country can apply this method, and how it should be applied. The analysis paves the way to answer this policy question: will the revised guidance make the profit method a powerful anti-BEPS weapon?

Andrew M C Smith School of Accounting & Commercial Law; Victoria University of Wellington

The OECD’S Multilateral Instrument (MLI) – Will It Save New Zealand from Multinationals’ Tax Avoidance?

Tax avoidance by major multinationals has been extremely topical over the last decade since the GFC. This has led to the OECD’s Base Erosion and Profit Shifting (BEPS) project has been to deal with this multinational tax avoidance problem. New Zealand has been an active participant in the BEPS project seeing a multilateral forum as the best way to deal with this problem rather than taking independent steps of its own. The multilateral instrument (MLI) arising out of the BEPS project is designed to simultaneously amend most of world’s DTAs as part of its solution to the worldwide tax avoidance problem.

The MLI is modular in that signatory states do not have to agree to all parts of it. This paper analyses the responses of all New Zealand’s forty DTA partners in respect to the MLI and the optional parts of the MLI. It will be concluded that the MLI is unlikely to be effective for New Zealand to deal with BEPS and that this has forced New Zealand to enact changes to its domestic law unilaterally. Such unilateral changes may bring it into conflict with its treaty partners and provides some grounds for concluding that the MLI may not be as effective as it was initially hoped to deal with multinational tax avoidance. It may also suggest that tax disputes between countries are likely to become more common in the future if the MLI proves as ineffective as the analysis in this paper supports.

Antony Ting; Associate Professor, University of Sydney Business School

Creating Interest Expense Out Of Nothing At All – Policy Options To Cap Deductions To “Real” Interest Expense

It is well recognised that interest deductions are often used by multinational enterprises (“MNEs”) as a relatively simple tool to minimise their tax liabilities. For instance, this issue is of “deep concern” for Australia’s Senate Economics References Committee which enquired into corporate tax avoidance in the last couple of years. Despite the significant effort devoted by the OECD and the participating countries in the Base Erosion Profit Shifting (“BEPS”) project, research has shown that the recommendations of Action 4 – which aimed at strengthening the interest limitation regimes – are not as effective as one would hope for.

One of the key issues with the best practice approach recommended in Action 4 is its failure to prevent interest deductions from exceeding a MNE’s net third party interest expense, or the “real” interest expense. This outcome is ironic as the OECD has repeatedly emphasised that a key objective of Action 4 was to recommend policy options to prevent interest deduction from exceeding the “real” interest expense (“the guiding policy objective”).

The article aims to identify and critically evaluate alternative policy options to achieve the guiding policy objective. It first discusses the policy rationale underlying this objective, paving the way for the analysis of alternative policy options to achieve that outcome. The article concludes by suggesting the optimal policy option that, though not the ideal solution in theory, may be the second best solution that is feasible in practice.

Nugroho, Adrianto: Associate Professor in tax law at Faculty of Law, Universitas Gadjah Mada (Yogyakarta, Indonesia) and PhD Student at Faculty of Law, University of Helsinki (Finland)

International Tax Research In Post-BEPS Era

This article explores the challenges brought upon by the holding of the Base Erosion and Profits Shifting (BEPS) project when conducting international tax research. In particular, international tax researchers seem to be directed at conducting more empirical research, for the post-BEPS environment favours for taxation that is based on economic activity and value creation. International tax researchers also have less interpretation methods in analysing various terminological issues on Double Tax Convention (DTC). This is caused by the paradigm shift that the Organisation for Economic Cooperation and Development (OECD) took when inserting an additional purpose of DTC to prevent double non-taxation into its 2017 Model Convention on Income and Capital. The OECD is no longer in favour of any rule of reasoning (e.g., the principle of legal certainty and the principle of balanced allocation of taxing rights) that could result in states losing their taxing rights on cross-border income. This could reduce the impact of international tax research on international tax policies, for any result against double non-taxation would be considered as valueless to policy makers.

Bronwyn Mccredie: Lecturer, Kerrie Sadiq, Professor Of Taxation, Ellie Chapple, Professor: QUT Business School, Brisbane, Australia

Navigating the 4th Industrial Revolution: Taxing automation for fiscal sustainability and equality

“Labour and capital will be interchangeable in the future due to automation ... we cannot just wait for this to happen ... we need to find another plan”

(Thomas Piketty, cited in Fernholz, 2014)

The 4th industrial revolution has arrived. But this industrial revolution is unlike those witnessed in the past that saw advancements through manufacturing and trade accompanied by higher standards of living for many. Equal opportunity and growth have been replaced by the 21st century trend of rising inequality, in which advancement through digitisation and automation brings fortune to the few and threatens to leave the rest behind (Weyer, 2016). As a result, current tax systems are under pressure with displaced workers requiring support, and the fiscal purse, which has historically been funded by income taxes, being eroded due to a decreasing number of workers to tax. Conceivably, it is up to Governments to address this ‘double negative effect’, but how and from what theoretical basis does it do so?

This paper presents a theoretical basis and three alternate models for taxing automation: a pigouvian tax; a tax on economic rents and an appreciation tax. Each of these models is evaluated alongside a discussion on the shift in global tax policy from taxing income to taxing capital. This paper argues that this shift is necessary to reduce inequality and to ensure even the lowest common denominator is provided for, for we are the 99%.

Ooi, Vincent Lecturer, School Of Law, Singapore Management University & Glendon Goh

Taxation of Automation And Artificial Intelligence As A Tool Of Labour Policy

Rapid developments in automation technology pose a risk of mass displacement of human labour, resulting in the need to support and retrain displaced workers (a negative externality). We propose an “automation tax” that would slow the adoption of automation technology in appropriate circumstances, giving workers and social support systems time to adapt. This could be easily implemented through changes to the existing schedular system of depreciation/ capital allowances, reducing the uncertainty of its application and implementation costs. Such a system would be flexible enough to keep up with rapid technological developments. Two main dimensions may be adjusted to produce intended distortionary effects: 1) accelerated depreciation, and 2) bonus depreciation. While the benefits of efficiency gains mean that the automation tax is unlikely to have widespread application, it does provide a useful tool for specific situations where the rate of automation needs to be slowed due to its resultant social costs.

Micah Burch: Senior Lecturer, Sydney Law School

Taxation Of The Commercialised Body

Advancing medical technology is challenging the default legal notion that the human body – its parts, products, and processes – is not amenable to either property law or commercial exploitation. Our ability to use and manipulate the human body's form and function has led to its inevitable commercialisation and the Australian legal community is just beginning to grapple with some of the attendant fundamental legal (and ethical) questions.

While the matrix of relevant Commonwealth and state law generally hews closely to the European Convention on Human Rights and Biomedicine's maxim that “the human body and its parts shall not, as such, give rise to financial gain”, there is a lively debate in Australia around biomedical science and its regulation. Indeed, recent court cases have revealed a nascent recognition of property-like rights in one's bodily materials – especially in light of the billion-dollar fertility industry and the vibrant commercial market for reproductive materials in particular.

However, to date there has been no considered analysis of the Australian tax law issues engendered by the commercialized human body. Such an analysis, important in its own right from a tax law perspective, could also help inform the larger ongoing policy debate. Thus, this project considers some of the fundamental income tax issues involved in such common biomedical ‘transactions’ as surrogacy (and other assisted reproductive technology), ‘donations’ of reproductive materials (eggs and sperm), and trade in other bodily materials (organs, blood, milk, hair, etc.).

Dr Sally Joseph

How Equitable Is Australia's Progressive Tax Rates?

This paper seeks to determine if the progressiveness of Australia's tax rates is disempowering in its application. The hypothesis is: The higher the income level reached in one's career, the proportionally less monetary reward or recompense achieved.

The initial methodology will be to compare the disposable income of two households – one single income with one double income of the same value – at different income thresholds. It will seek to determine what the optimal income level is to maximise proportional disposable income.

A review of the literature will be undertaken to assess, inter alia:

- What behaviours does this engender in taxpayers
- What responses have governments initiated as a result

From this literature review, an assessment will be made as to how this may affect how people progress in their careers.

Future research will be determined. It is envisaged that this may take the form of qualitative research in the form of interviews. Further, there is opportunity for collaborative research with respect to social impacts.

Sue Yong Auckland University of Technology; Karen Lo Auckland University of Technology; Brett Freudenberg Griffith University and Adrian Sawyer University Of Canterbury

Tax Compliance In The New Millennium

Taxpayer compliance is a critical part of any tax system, as without it the integrity of the tax system can be undermined, additional resources expended by revenue authorities and insufficient tax revenue raised. There have been a number of theories postulated to try to explain why taxpayers may or may not comply, extending from the deterrence theory¹ to motivational postures.² It is likely

that no one theory can completely explain the complex relationship between taxpayers and the tax system, as there are many types of taxpayers from salary and wage earners, to high wealth individuals and those conducting enterprises of various sizes, as well as taxpayers with different cultural and religious backgrounds, literacy, and age. Also, the tax culture of a jurisdiction may influence tax compliance, with the presence or absence of trust and/or corruption potentially influencing compliance behaviour.³ Furthermore, it could be that these factors alter with time, as there are changes in technologies, working habits and our understanding of tax compliance. In fact since the 1960s there have been many studies around the world exploring tax compliance in various jurisdictions. In isolation these prior studies have been important in illuminating various factors about why people do or do not pay their taxes.

However, what observations are available if we consider these prior studies as a whole? It is argued that such aggregated reviews of prior studies are important in illuminating important trends and commonalities. Previously, Jackson and Milliron published a comprehensive study reviewing and synthesising the findings of tax compliance studies conducted prior to 1986.⁴ Their study considered compliance variables, methodological issues and the theoretical areas. This research was then built upon by Richardson and Sawyer synthesising the work from 1986 to 1997 which considered what developments had occurred since Jackson and Milliron's study in terms of compliance variables, methodological issues, theoretical areas, as well as new emerging areas.⁵

This current research seeks to build upon these two important studies and extend our knowledge by analysing tax compliance studies from 1997 to 2016. This analysis was facilitated by using text mining software, Leximancer, to visualise the frequency and co-occurrence of concepts and themes related to tax compliance factors. Data was drawn from 657 articles obtained from 15 research databases pertaining to taxation, accounting, social sciences, law, economics, business, political sciences and psychology journals. In considering these tax compliance studies over the last twenty years, it appears that in the early part of the new millennium (1997 to 2006) the main factors discussed were tax evasion, tax morale, tax system and tax compliance cost. Whereas, since 2007 to 2016 new factors have emerged from the studies, including culture, trust and sanctions; although evasion and tax compliance cost are still large themes emerging.

Additionally, this analysis provides some insights into the gaps in tax compliance literature, as well as providing a pool of resources for new and experienced tax compliance researchers. With such a thorough analysis it adds richness to our comprehension of tax compliance, not only in terms of variables but also methodologies. Such findings build a strong foundation for future research as we continue to explore tax compliance in the new millennium.

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4. Betty R. Jackson and Valerie C. Milliron. (1986). *Tax Compliance Research: Findings, Problems, and Prospects*. 5 *Journal of Accounting Literature* 125-166.
5. Maryann Richardson and Adrian J. Sawyer. (2001). *A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects*. 16(2) *Australian Tax Forum* 137 – 284.

John Bevacqua Academic Director, La Trobe Online, La Trobe University,

Slippery Slopes And Digital Divides: Exploring The Effects Of A 'Digital By Default' Approach To Tax Service Provision On Taxpayer Compliance Behaviours

A decade ago, Kirchler, Hoelzl and Wahl presented the 'slippery slope' framework for understanding tax compliance behaviour¹. The slippery slope framework plots the relationship between two alternative paths to tax compliance – via the exercise of power by tax authorities to compel compliance and deter non-compliance and, alternatively, through building trust between the tax authority and taxpayers. The slippery slope framework has subsequently been applied and tested in a range of contexts and its correctness is widely accepted.

Concurrently, some tax authorities have been moving toward a 'digital by default' approach to providing taxpayer support and services. The Australian Taxation Office is among the most enthusiastic proponents of such an approach. The recently released United Nations e-government survey indicates this is part of a broader accelerating trend toward digitisation of government services for citizens.

Notwithstanding, there is credible empirical evidence from the United States of certain vulnerable taxpayer groups being potentially disadvantaged by this trend. This is by virtue of relative difficulties faced by these demographic groups in accessing and using digital information and support which places them on the wrong side of the 'digital divide'. Particularly vulnerable to such difficulties according to research by the United States Taxpayer Advocate Service are those on low incomes, seniors and the disabled.

In light of this research, this paper examines the extent to which a 'digital by default' approach to tax administration might translate into an erosion of trust and confidence in the tax authority among these vulnerable taxpayer groups. More fundamentally, though, this paper asks whether a 'digital by default' approach to tax service provision might unwittingly cause a shift in balance between power and trust which locates our tax administration system on the slippery slope tax compliance framework continuum.

1. Kirchler E, Hoelzl E & Wahl I, 'Enforced Versus Voluntary Tax Compliance: The "Slippery Slope" Framework' (2008) 29(2) *Journal of Economic Psychology* 210.

Benjamin Walker: Senior Lecturer, School of Accounting and Commercial Law, Victoria University of Wellington

The Opportunities And Challenges Of Artificial Intelligence To The Tax Profession

The physicist, Stephen Hawking, once remarked that AI is likely to be either the best or worst thing to happen to humanity. The explosion of new wave legal technologies has impacted the provision of legal services in many ways we are only beginning to understand. The tax profession is no exception. AI is the most significant new wave technology that is changing the professional landscape. The traditional domains of human cognitive function are slowly being replaced by AI that can replicate certain end results using complex algorithms.

The advancement in Natural Language Processing gives a machine the power to read and understand human language, which can outperform a junior tax advisor. The new AI products such as Blue J Legal and CCH AnswerConnect are recent AI products that replicate certain functions traditionally reserved for the tax advisor. Efforts in the 20th century to advance AI were largely unsuccessful. However, the potential power of AI is now far greater due to the explosion of big data. Therefore, there is an urgent need to discuss and analyse the impact of AI on the tax profession. Despite the increase in innovative tax products, there is sparse literature that connects AI and tax specifically. This paper focuses specifically on the use of AI and the tax profession.

This paper identifies two main opportunities of AI: reduced costs and enhanced quality to the customer. However, three challenges are also identified: inherent limitations of data, indeterminacy of law and product liability. The author provides a much needed contribution to tax literature by arguing that the first two problems should warrant a cautious approach to the adoption of AI in the provision of tax services.

Eva Huang & Xi Nan University of Sydney Business School

Another Place To Hide Business Activities? The Side Effects Of Social Media Platforms.

It has been hotly debated that Australia is losing up to \$1 billion¹ in uncollected tax from Chinese personal shoppers who ship Australian health care products, baby formula, and food to China. Technological innovations have led to the development of cross border e-commerce on social media platforms, transactions on these platforms are hard to detect. The most commonly used social media application in China is WeChat. Transactions on WeChat are as hard to detect as traditional cash transactions in the hidden economy. Traditional cash transactions in the hidden economy are illegal because taxpayers are trying to avoid their tax liabilities.

For income tax purposes, on WeChat, sellers (from the import source country) use the social media platform to conduct business activities since Wechat has the function to allow communications and transfer of payments between users. The payment transfer function on Wechat was initially designed for social purpose to provide convenience between Wechat friends, it is therefore hard for the tax authority to identify the nature of the money transfers. Tax authorities of both the import source country and importing country cannot easily detect account and payment details, thereby income made by sellers are not taxed in practice.

As for the collection of indirect taxes from cross-border transactions on WeChat, the rapid development of cross border online goods sales transactions has resulted in value added tax incidence detection for tax authorities.

This paper is an empirical case study that explains the hidden economy nature of cross border transactions on social media platforms such as Wechat. Detection is the major tax administration difficulty in relation to the hidden economy. This paper compares the purchasing transaction completed on WeChat, and traditional hidden economy purchasing transactions; and examines the feasibility of applying advanced technology to assist in detecting transactions for tax collection purposes.

1. Eddie, R. (2016, September 27). Australia is Missing out on \$1BILLION in Tax Revenue' because Shoppers are Selling and Shipping Products to China. Daily Mail Australia. Retrieved from <http://www.dailymail.co.uk/news/article-3809272/Australia-losing-1BILLION-tax-revenue-Chinese-shoppers-known-daigou.html>

PARALLEL SESSIONS 5: - Friday 18th January 2.30am – 3.45pm

Jonathan Barrett Senior Lecturer, School of Accounting and Commercial Law, Victoria Business School, Victoria University of Wellington.

Should We Treat Artworks As Merit Goods For Tax Purposes?

Artworks are often preferentially taxed. France, for example, which has a tradition of promoting artists' interests, excluded artworks from its wealth tax, levies a special low rate of value-added tax on direct sales by artists, and provides for a capital gains tax ('CGT') exemption for artworks. In contrast, Australia does not treat artworks as merit goods for goods and services tax or CGT purposes. This differential treatment may be seen as a manifestation of philistinism on the part of Australian policymakers but, like France and other European countries, Australia privileges artists over other producers of things by operating an artists' resale right (ARR). (Economists typically consider an ARR to be a quasi-tax.) Even New Zealand, which has shied away from an ARR and has a values-free GST system, excludes artworks when means testing for certain benefits. The fact of preferential tax treatment of artworks is evident; this paper engages with normative issues to inquire whether we should treat artworks as merit goods for tax purposes.

Mark Bowler-Smith Senior Lecturer in Tax Law, University of Auckland Business School

Dynamic State Taxation

Two discourses are cutting across those disciplines that concern themselves with the socio-economic future of mankind. Static state discourses promote restricting, and in some cases halting, the manner in and the extent to which people consume products and services. Ultimately, they take a rather dystopian view of things. Dynamic state discourses, on the other hand, are unconcerned by untrammelled production and consumption because of the conviction that techno-scientific 'fixes' will alleviate any and all of the negative externalities associated with the way in which we 'do' capitalism.

There is a degree of optimism inherent in dynamic state discourses. They celebrate humanities' inventiveness and put absolute faith in the ability of scientific rationalism to chart our course into the future: to solve problems as and when they arise. Dynamic state discourses are arguably to be preferred; not because they are utopian but because they recognise the importance of the psychological, physiological and situational benefits traditionally associated with wealth maximisation and economic growth. These benefits are not only important in themselves but they are also the sine qua non of a successful problem-solving culture.

With a view to promoting 'state dynamism', this paper explores five tax policy options for competition-based, sustained economic growth (or techno-scientific wealth maximisation). First, promote knowledge-based productivity by replacing the corporate income tax with a levy on all firms in relation only to expenditure on certain raw materials and intermediate products. Second, award tax credits to firms that outperform other firms in the same sector. Third, improve R&D tax credits (and Patent Box schemes) by better targeting the creation of new scientific knowledge. Fourth, factor in the opportunity cost of using human ingenuity and scarce resources on fripperies/trumperies by replacing the personal income tax with a selective consumption tax. Finally, improve civic culture – with a view to helping generate optimism and a cultural flourishing – by ensuring that any and all donations to non-profit organisations can be credited against both the expenditure and consumption taxes.

Ann Kayis-Kumar Senior Lecturer; Peter Mellor, Research Fellow and Chris Evans, Professor: School of Taxation and Business Law, UNSW Sydney

Tax Deductions In A Changing World: Policy Options For Dealing With The Costs Of Tax Advice

The Australian income tax provisions currently permit a deduction for various items of tax-related expenditure, including expenses incurred in managing tax affairs, interest charged by the Australian Taxation Office and the costs of tax litigation. The history of this provision suggests that it was introduced with the principal objective of fostering improved tax compliance, although there are now suggestions that it may be more closely associated with tax minimisation than tax compliance. As a result there have been recent calls for the deduction to be capped at a relatively low level.

This article explores the development of the deductibility of tax-related expenses and compares and contrasts the Australian experience with that of broadly similar tax jurisdictions. It identifies a continuum of approaches that have been adopted elsewhere and suggests that the Australian experience places it at the more generous end of the spectrum.

Robert Gregory, Lecturer in Taxation and Financial Planning; Department Of Accounting Economics and Finance; Swinburne University

The Commissioner's Position On Bitcoin: A Search For A Legal Or Economic Rationale

Occasionally a novel financial instrument is created that does not fit standard categories, consequently its economic and legal treatment may become inconsistent depending upon the circumstances under which it is used. Inevitably the relevant authorities for each circumstance will attempt deal with a new instrument according to existing settled criteria or rules which may create a distortion whereby the legal treatment does not reflect the economic substance of the arrangement. At the very least some uncertainty may be created which, in relation to taxation, may breach the canon of certainty and create economic distortions in free market decisions.

It could be anticipated that a rigid formulaic legal approach to any analysis of bitcoin is more likely to create distortions. A broad principles approach generally has more scope to adapt to new instruments, however uncertainty may exist in the short term until the matter becomes settled either through litigation or legislation. The Commissioner of Taxation has released rulings and public documents stating his position in relation to Bitcoin as opposed to the wider range of cryptocurrencies in general. The scope limitation to Bitcoin is perhaps prudent because it generally has a narrow range of uses, primarily intended for peer-to-peer payments.

The purpose of this paper is to review some economic and legal principles behind various positions adopted by The Commissioner in relation to alternative forms of money or currency and compare with those positions specifically relating to Bitcoin.

Professor Julie Cassidy Professor of Law and Taxation, Commercial Law Department, University Of Auckland, & Dr Man Huang Alvin Cheng Lecturer, Department of Finance and Accounting, The University Of Nottingham

A Toss Of A (Bit)Coin: The Uncertain Nature Of The Legal Status Of Cryptocurrencies In Australia and New Zealand

Based on similar technology, hundreds of cryptocurrencies are being created and traded. Bitcoins are by far the most popular cryptocurrency, but many others exist. The popular "coins" fluctuate dramatically in "prices", where realised and unrealised gains are being made by coin-holders.

Defining the legal nature of cryptocurrencies and in turn ascertaining what gives them value is important for many reasons. At its most fundamental level the answer to these matters will determine the regulatory framework within which trading in cryptocurrencies may or may not occur. At one extreme the government may simply prohibit trading in cryptocurrencies, even making such transactions illegal, as in China and Vietnam. At the other end of the spectrum trading may not only be legal, but be facilitated by government concessions. The most important of these concessions is recognising cryptocurrencies as "currency". To this end it is crucial from the outset to understand that that the term "cryptocurrency" is in itself a misnomer. If it is to obtain the status of "currency", whether that be foreign currency or equivalent to local currency, will be determined by the government of the relevant jurisdictions. As in the case of Vietnam, New Zealand and Australia's CGT, it may be determined that transactions involving cryptocurrencies merely involve the sale of property, akin to the sale of shares, futures, or in some cases the parallel that is drawn is gold bullion or oil. Alternatively, as in the case of Japan and Australia's GST, it may be treated as "currency" that has the same status as foreign currency or, in extreme cases, equivalent with currency issued by the local sovereign state.

This has significant ramifications to the tax treatment of gains and losses from such transactions. As property, not only will transactions made in the ordinary course of business be subject to tax as ordinary/business income, but non-business tradings may also be subject to income/capital gains tax. The umbrella of transactions caught under this approach may not only include the purchase of cryptocurrencies purchased with a profit making intent, but also extend to *ad hoc* dabbings in such trading. Even in this context, the category of property into which cryptocurrencies are placed will be important. Are they a form of tangible or intangible property? Are they a financial products? In the tax context, financial products are traditionally exempt / "zero rated" in terms of goods and services taxes (GST). Further, if the cryptocurrency is akin to local currency it will normally be exempt from taxes such as capital gains tax and, again, services taxes (GST). As to which way a government might turn is anyone's guess: A toss of a (bit)coin!

Alfred Tran and Wanmeng Xu: Research School of Accounting, Australian National University

Book-Tax Differences Of Large Australian Companies

Using data from the corporate tax transparency reports of entity tax information released by the Australian Taxation Office for the three income years 2013-14 to 2015-16, this study investigates the relations between (a) 'taxable income' in corporate tax return and 'profit before tax' in financial report and (b) 'tax payable' in corporate tax return and 'tax expense' and 'current tax expense' in financial report, as well as other variables that may explain these book-tax relations. This study finds that on average a 1% increase

in profit before tax from continuing operations is associated with 0.66% increase in taxable income. On average a 1% increase in tax expense in income statement is associated with 0.71% increase in tax payable in tax return, and a 1% increase in current tax expense is associated with 0.95% increase in tax payable in tax return. Profits from discontinued operations, profits attributable to non-controlling (or minority) interests in the corporate group, the extent of foreign operations and the tax losses carried forward indicator also explain the book-tax relations.

Karen Alpert: UQ Business School, University Of Queensland

Callous Neglect: The Impact Of United States Tax Reform On Nonresident Citizens

US tax rules are complex and nowhere more so than the international provisions. However, due to the US practice of citizenship based taxation, nonresident US citizens are frequently impacted by US international tax rules aimed at multinational corporations and high net worth US residents. The international provisions in the US tax reform legislation enacted in December 2017, informally named the Tax Cuts and Jobs Act (TCJA), are no exception. While the benefits, such as a 100% dividend received deduction for distributions from foreign subsidiaries, are largely limited to US domestic corporations; the costs, such as “repatriation” of accumulated foreign earnings and a new global minimum tax, apply to controlled foreign corporations (CFCs) owned by individual US shareholders and are being applied to local corporations owned by US citizens resident in other countries. Thus, Australian corporations owned by Australian citizens or residents subject to US citizenship based taxation could be subject to potentially *devastating* new US taxes with no corresponding benefit. How did this come about, and what, exactly, has Congress neglected to consider?

These new taxes have been implemented through the US CFC regime which is found in a portion of the US Internal Revenue Code known as “Subpart F”.¹ Prior to TCJA, Subpart F allowed the deferral of active CFC business income earned outside of the US until an actual corporate distribution (dividend) was made to the US shareholders. Aimed at large multinationals such as Apple, the s965 repatriation tax imposes retroactive US taxation on the accumulated undistributed earnings of CFCs since 1986. New s951A imposes a tax on “Global Intangible Low Taxed Income” (GILTI), which re-defines certain non-US active business income as US-source and subject to immediate US taxation even if not distributed to US shareholders.

While Congress clearly intended that these taxes should be imposed on individuals shareholders of CFCs, there is no indication in the legislative record that Congress considered the disparate impact of these rules on US-resident shareholders and those resident in other countries. This paper quantifies the effects of the new law on US-resident shareholders of Australian corporations relative to Australian-resident shareholders, demonstrating that the interaction of these new taxes with existing tax treaties was not considered. In particular, the timing difference between US taxation and host country taxation will lead to double taxation that may not be mitigated by tax treaties, especially for shareholders who are tax residents of the CFC’s host country.

In August 2018, the Internal Revenue Service issued proposed regulations implementing s965, which apply to calendar year 2017 tax returns. This paper will explore the impact of these regulations as well as potential legislative remedies being pursued by non-resident US taxpayers.

While these provisions of TCJA may make sense when applied to US-resident shareholders of CFCs, the disparate impact on non-resident US taxpayers is another illustration of the problems that ensue when a country imposes the same rules on both residents and nonresidents.

² Subpart F is found in 26 USC sections 951 – 965.

Christine Tjen; Vitria Indriani & Panggah Tri Wicaksono; Faculty Of Economics And Business Universitas Indonesia

Trust, Information System Quality And Perceived Net Benefit: A Study On The Use Of Tax E-Filing In Indonesia

The purpose of this paper was to explore the perception of online tax filing in Indonesia using trust and Information System (IS) success model.

The paper examined how the IS quality will be influenced by attributes such as prior experience on offline tax filing, trust in government, trust in technology, and trust in e-Filing website. Following this, the influence of IS quality on perceived usefulness and user satisfaction will be explored. To end the model, the paper was intended to answer question on whether the last two dimensions (perceived usefulness and user satisfaction) will have an effect on perceived net benefit. This paper used primary data generated by distributing online questionnaire and able to get the total of 1.095 respondents, 998 of which are actively using online tax-filing (e-filing). The data were analyzed by the Structured Equation Model (SEM).

The results suggested that trust in government and trust in technology positively affect the trust in e-Filing website, which subsequently influence all three IS quality dimensions. System quality and service quality was found to be consistently and significantly influence the perceived usefulness and user satisfaction. It was evident that tax payers in Indonesia placed the robustness and the safety features of the online system as the most important attributes that will influence the usefulness and satisfaction of online tax filing. Overall, though the system still has room to meet users’ expectation, the respondents put high value on the current e-filing system and considered it more beneficial than the offline tax reporting system.

Online tax filing will soon be mandatory in Indonesia. Thus, the tax authority is required to design impeccable system that

accommodate the needs of the tax payers. The study found many attributes that are relevant for the users and this input will be advantageous for e-filing system improvement.

Tax system is unique to every country. This study provided context-specific evidence. In Indonesia, where tax compliance is considered low, the use of e-filing is expected to increase taxpayers' willingness to pay and report their taxes. Prior research in this subject were limited to investigating the determinants of intention to use e-filing. Meanwhile, the present study examined users' perception on the benefit of e-filing. In addition, this research also specified trust into three separate dimensions; trust in government, trust in technology, and trust in e-Filing website.

Tshepiso Makara Lecturer Faculty of Business, Sheridan College, Perth, & Adrian Sawyer Professor in the Department of Accounting and Information Systems, University of Canterbury

Possible Value Added Tax Simplification Measures For Small Businesses In Botswana – Lessons From New Zealand

The Value Added Tax (VAT)¹ system in Botswana, introduced in July 2002, has since gone through several reforms. This includes: an increase in the VAT rate from its introductory rate of 10 per cent to the current 12 per cent in 2010; two increases in the registration threshold from the initial P250,000 (AUD32,000)² to P500,000 (AUD64,000) in 2010, and from P500,000 (AUD64,000) to the current P1,000,000 (AUD128,000) in 2015 and; an increase in the number of zero-rated goods. Such reforms complicate the VAT system and increase VAT compliance costs, especially for small businesses. This paper explores possible VAT simplification measures for small businesses in Botswana, using the New Zealand GST system as a benchmark for a simplified VAT system. The New Zealand GST system is globally known as a model system, which has influenced GST designs in many countries. This study concludes with tax policy implications for Botswana and potentially for similarly placed countries. The study recommends: broadening of the VAT base, reduction of VAT returns filing frequency and introduction of cash accounting for small businesses, as measures to simplify the VAT system in Botswana.

1. Also known as GST in other countries. These terms will be used interchangeably in this paper

2. The exchange rate of Botswana Pula (BWP) to Australian Dollar (AUD) as at 22 August 2018 was 0.128: <www.xe.com>.

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Small And Medium Sized Enterprises And The Goods And Services Tax: An Analysis Of Major Implementation Issues For Malaysia, Botswana And Australia

This paper discusses the Goods and Services Tax (GST) implementation experiences that confronted the Malaysian, Botswana and Australian Small and Medium-sized Enterprises (SMEs).¹ Botswana uses the term Value-Added Tax, which is synonymous with the Goods and Services Tax (used in Malaysia and Australia). GST was introduced in Malaysia, Botswana and Australia on 1 April, 2015, 1 July, 2002 and 1 July, 2000 respectively, as key part of these countries' major tax reforms. GST is a broad-based indirect tax and is levied on most supplies of goods and services consumed within a country, with most food, health and education services zero-rated (GST free). GST is currently levied at a rate of six per cent in Malaysia, 12 per cent in Botswana and 10 per cent in Australia.

This paper also makes reference to international SMEs' tax compliance cost studies, for example, the UK, New Zealand and Singapore. The extent to which the key stakeholders' participation in the overall GST implementation and policy debate is discussed. Further, from a compliance cost perspective, the paper focuses on the mix of charging categories, GST registration threshold, the use of technology for GST compliance, the zero-rating of most food, the role of the Australian, Botswana and Malaysia consumer "watch-dogs" in the SMEs' compliance requirements, the methods of accounting for GST and the potential implementation benefits for SMEs. The conclusion sums up the key issues discussed.

1. Following the presentation invitation from the Malaysia Institute of Accountants to share the Australian SMEs' experiences on the GST implementation with their members, the Authors wanted to articulate the prominence of the issues that were discussed at the forum.

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