

## **ATTA News January 2020**

<https://www.business.unsw.edu.au/about/schools/taxation-business-law/australasian-tax-teachers-association/newsletters>

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ATTA website: <https://www.business.unsw.edu.au/about/schools/taxation-business-law/australasian-tax-teachers-association>

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### **1 Presidential column**

I hope everyone has had time to rest and relax over the past couple of weeks. I'm looking forward to catching up with ATTA colleagues in Tasmania from 22-24 January.

I would like to draw your attention to Item 8 in the newsletter. Bronwyn McCredie is organising a new Tax Special Interest Group (SIG) at the next Accounting and Finance Association of Australia and NZ (AFAANZ) conference. The proposed Tax SIG includes a wide range of tax areas, so please do get in touch with Bronwyn if you are interested in participating. The conference is 5-7 July in Melbourne.

By way of something completely different - Item 9 outlines a unique research output with the publication of "Henry's Taxing Day" from Annette Morgan and Donovan Castelyn at Curtin University. It's great to see the creation of a tax publication for the very youngest among us.

Please also see the proposal raised by Justin Dabner that we will discuss at the ATTA AGM (at item 5).

Wishing you all the best for 2020.

Lisa  
Lisa Marriott  
President – ATTA

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## 2 ATTA Women in Tax Breakfast

# ATTA Women in Tax Breakfast Panel Session: Building your Academic Brand

Associate Professor Cynthia Coleman Patron of ATTA

Associate Professor Catriona Lavermicocca Associate Dean (P&P) Macquarie

Professor Lisa Marriott Professor of Taxation and Assoc. Dean (Research) VUW



Please join us at this panel session where we will enjoy a buffet or continental breakfast while discussing how to create and build your academic brand with the benefit of lessons learned from three world renowned female tax academics. We will also discuss various new and existing opportunities that are available to female tax academics including the ATTA 'Women in Tax' scholarship and an Australasian 'Women in Tax' network. Space is limited so attendance will be reserved on a first come basis.

**Date:** Thursday 23rd of January, 2020

**Time:** 7.30—8.45am

**Place:** The Old Woolstore (conference venue) function room adjoining restaurant

**Cost:** Full \$24.50 or continental breakfast \$18.00 — to be charged back to room or paid on day to The Old Woolstore

**RSVP:** [bronwyn.mccredie@qut.edu.au](mailto:bronwyn.mccredie@qut.edu.au) by Monday 13th January, 2020



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### **3 ATTA's 32nd Annual Conference**

The theme of the conference is 'Small Business and Innovation: Does the Taxation Law support or hinder growth?'. The Tasmanian School of Business and Economics will host the conference at The Old Woolstore, Hobart from 22nd to 24th January 2020.

Late abstracts will be given serious consideration for inclusion in the conference. Please email full papers to John McLaren at [john.mclaren@utas.edu.au](mailto:john.mclaren@utas.edu.au)

Registration is available now. Registration options are as follows and include GST:

Full Fee (after 29 October): \$650 (3-day conference attendance including welcome function, conference dinner and farewell function)

PhD Students (Full time): \$395 (3-day conference attendance including welcome function, conference dinner and farewell function)

ATO rate: \$305 (Days 2 and 3 conference attendance including lunch, morning and afternoon tea)

Industry: \$150 (One day conference attendance including lunch, morning and afternoon tea)

Welcome function only: \$60; Conference dinner only: \$180; and Closing function only: \$65

Prices are in Australian Dollars

If you have any questions, please contact Nicky Bawle at [nicky.bawle@utas.edu.au](mailto:nicky.bawle@utas.edu.au) or visit the conference website at <http://www.utas.edu.au/atta-2020>

### **4 ATTA AGM Agenda 2020**

Date and time: Friday 24 January 2020 (time to be confirmed)

Venue: The Old Wool Store Hotel, Hobart

Present:

Apologies:

1. Minutes of the previous meeting which were published in the ATTA News May 2019 edition
2. Matters arising from the minutes
3. Reports:  
President's report  
Treasurer's report  
Secretary's report
4. Election of 3 Executive Committee Members
5. Confirmation of State/Territory/NZ representatives
6. Appointment of auditor
7. Expressions of interest for hosting ATTA 2022 and 2023  
ATTA 2021 to be hosted at the University of Canterbury, Christchurch, NZ
8. General business:

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## **5 Biennial virtual ATTA Annual conference proposal to be discussed at the 2020 AGM**

### **Proposal to move to a biennial virtual conference**

As much as I have enjoyed and benefitted from attending ATTA conferences I have a suggestion that we consider hosting every second conference as a virtual conference. While I accept that the face-to-face aspect of the physical conference is particularly valuable from a networking perspective, my rationale for a biennial virtual conference is as follows:

1 Reduction in carbon emissions from our travelling to a venue. We can lead by example and be part of the solution to climate change, rather than the problem.

2 A reduction in the cost of attending.

3 The opportunity to vastly extend our coverage (and contacts) – attract speakers from other cultures and jurisdictions and attendees from all over the world (especially those who might not otherwise be able to afford to attend).

4 The software has evolved to allow better audience engagement and the opportunity for networking and social engagement.

5 The opportunity to both record presentations and have them at varying times can cater for time zone differences and other commitments of audiences.

In summary, we could make our conference more accessible and culturally and jurisdictionally diverse while also reducing our carbon footprint.

Justin Dabner  
January 2020

## **6 Arrivals, departures and honours**

Congratulations to **Barnali Banerjee** who completed her PhD on the topic of *An analysis of the operation of concessions and exemptions available within Australia's capital gain tax regime from a tax complexity perspective*, 2019. This was done under the auspices of Monash University and her supervisors were Prof Vince Morabito and A/Prof Ken Devos (Swinburne University of Technology).

\*\*\*\*\*

**Michael D'Ascenzo** remains on the Board of the Clean Energy Regulator, has helped Saudi Arabia and Bahrain introduce and implement their VATs, and he has published a couple of articles in the *International VAT Monitor*.

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## **7 ATTA people in the media**

### **Morabito, Vince**

Bonyhady, Nick 'Litigation in different class' *Sydney Morning Herald Business* 14-15 December 2019 p 4

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## 8 Tax Special Interest Group at AFAANZ Conference

I am writing to inform you of a new Special Interest Group (SIG) that we are developing and expect to host at the next Accounting and Finance Association of Australia and New Zealand (AFAANZ) conference, the **Tax SIG**. The Tax SIG is tasked with developing a supportive and productive environment for tax academics in Australia and New Zealand who are engaged in, or wish to engage in tax research and/or teaching. The Tax SIG will aim to encourage research and education in tax and foster relationships with industry to improve and contemporise academic contributions. This will be achieved through keynote presentations from leading tax academics and practitioners, panel sessions, research presentations and networking opportunities. Members may include those with interests in all areas of taxation including:

- tax policy;
- tax compliance and morale;
- taxation of individuals;
- taxation of structures;
- international tax;
- capital gains tax;
- taxation of superannuation; and
- indirect taxes.

As we are planning to host the inaugural Tax SIG at the AFAANZ Conference in Melbourne next year (2020), I would appreciate your kind cooperation and help in recruiting twenty interested participants (who are also members of AFAANZ) to establish a quorum. To register your interest, or to obtain any additional information, please contact the SIG organiser at: [bronwyn.mccredie@qut.edu.au](mailto:bronwyn.mccredie@qut.edu.au).

I look forward to working with you to establish this valuable group and resource.

Thank you and kind regards,



Bronwyn McCredie

## 9 Henry's Taxing Day

The Curtin University Tax Clinic's newly published book "Henry's Taxing Day" that is available for purchase for \$10, all funds go back into the clinic. If you take a look at the webpage <https://businesslaw.curtin.edu.au/law/tax-clinic/> you can see the link there. The book was created to address several gaps in the delivery of tax and more broadly, financial literacy education. **Copies will be available for sale at the ATTA Conference in Hobart, 22-24 January 2020.**

The idea was conceived in response to research Annette and I conducted in 2017-18. Our study sought to evaluate the prevalence of taxation education nationally and to gauge whether

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participants would have benefited from structured taxation education throughout their secondary education. Participants were overwhelmingly in favour of the latter. As to the former, it was also apparent that little to no programs existed, or were inadequate given the emerging needs of their graduates.

Given that tax plays a crucial role in all manner of transactions, and that the revenue generated from the collection of taxes enables the majority of public services we enjoy, it is essential that future participants of the tax system are informed of their obligations and understand broadly how the taxes we pay are used. Early education and intervention is therefore essential to developing a society who are conscious of their compliance obligations and willing to participate in the tax system authentically and transparently.

The first instalment in this book series is targeted towards pre-primary students and provides a soft introduction to the broad concepts of taxation. It is our hope that the compliance and public services message will resonate with parents and children alike. This, we expect, will be the first step in developing a culture in future taxpayers centred around compliance.

# Henry's Taxing Day



Annette Morgan and Donovan Castelyn

## **10 Recent Australian tax cases**

The following cases are from the last month or more of Australian cases on tax and related matters, with the catchwords taken from the ATO <<http://www.ato.gov.au>>, AustLII <<http://www.austlii.edu.au>>, Federal Court <<http://www.fedcourt.gov.au>>, Victorian Bar Tax Bar Association <<https://www.vicbar.com.au/public/bar-associations/tax/association-news>>, NSW CaseLaw <<http://www.caselaw.nsw.gov.au>> websites and BarNet Jade alerts.

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## Federal Court of Australia

*Commissioner of Taxation v The Trustee for the Michael Hayes Family Trust* [2019] FCAFC 226, Griffiths, Derrington and Steward JJ, 16 December 2019

Taxation – public trading trusts – whether a unit trust is a public trading trust – whether an exempt entity had the right to acquire or become the holder of units in the unit trust that entitled it to not less than 20% of the beneficial interests in the income or property of the unit trust – whether s 102P(10) of the Income Tax Assessment Act 1936 (Cth) on its proper construction provides for a proportionate tracing of units through one or more interposed trusts

Taxation – trust income – whether trustee of a trust exercised the power to accumulate income by crediting its accounting profit to a “Retained Profits Account” rather than distributing it to the unitholders – whether financial statements of the trustee were sufficient to prove that it had exercised a certain power under the trust deed – whether the taxpayer was presently entitled to a share of the net income of the trust

Trusts – construction of trust deed – relevance of surrounding circumstances – ambiguity – mistake – where trust deed identified a named company “as trustee for” a specified superannuation fund as the “Second Absolute Beneficiary” of the trust – where the named company had in fact ceased to be the trustee of the superannuation fund – where a deed of rectification purported to rectify the trust deed as and from the establishment of the trust – whether the reference to the named company is a case of ambiguity or mistake – whether construction of the trust deed is to be undertaken having regard to evidence of surrounding circumstances

The court orders that:

1 The appeal be dismissed with costs as agreed or assessed

<https://jade.io/article/695306>

*Commissioner of Taxation v Scone Race Club Limited* [2019] FCAFC 225, Griffiths, Derrington and Steward JJ, 16 December 2019

Superannuation – whether respondent race club was liable to pay a superannuation guarantee charge in respect of riding fees paid to jockeys during the relevant period – whether jockeys engaged to ride in races or barrier trials were employees of the respondent race club within the extended definition in s 12(8)(a) of the Superannuation Guarantee (Administration) Act 1992 (Cth) – whether the primary judge erred in holding that the respondent race club discharged its burden to show it was not “liable” to pay riding fees to jockeys engaged by owners or trainers – appeal allowed

Taxation – appeal from objection decision in the Court’s original jurisdiction under s 14ZZ of the Tax Administration Act 1953 (Cth) – whether the primary judge impermissibly reversed the onus of proof under s 14ZZO(b)(i)

The court orders that:

1 The appeal be allowed.

2 The orders made below on 21 June 2019 be set aside, and in lieu thereof it be ordered that the applicant’s appeal against the respondent’s objection decision of 17 August 2017 be dismissed.

<https://jade.io/article/695305>

*Commissioner of Taxation v Racing Queensland Board* [2019] FCAFC 224, Griffiths, Derrington and Steward JJ, 16 December 2019

Superannuation – whether principal racing authority liable to pay superannuation guarantee charges – construction of s 12 of Superannuation Guarantee (Administration) Act 1992 (Cth) – whether principal racing authority is “employer” of jockeys – whether principal racing authority liable to pay riding fees to jockeys – where principal racing authority stated that it would pay jockeys – where principal racing authority in fact paid jockeys – where principal racing authority prepared recipient created tax invoices reflecting liability to pay – whether

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payments made “on behalf of” another person – where amounts paid not reimbursed by another person

Taxation – appeal from objection decision – onus of establishing that assessments excessive or otherwise incorrect – whether onus discharged

Contracts – nature of contractual relations in regulated industry of thoroughbred horse racing – relevance of statutory instruments and rules of sport to formation of contracts – engagement by third parties to participate in races

Appeal and new trial – whether appellable error in approach to evidence adduced on appeal from objection decision – where evidence of past events not adduced from contemporaneous witnesses – relevance of evidence relating to arrangements prior to the relevant period

The court orders that:

1 The appeal be allowed.

2 The orders made below on 12 April 2019 be set aside, and in lieu thereof it be ordered that the applicant’s appeal against the respondent’s objection decision of 17 August 2017 be dismissed.

<https://jade.io/article/695304>

## Victoria

*MD Commercial Pty Ltd v Commissioner of State Revenue* [2019] VSCA 295, Tate, Whelan and Niall JJA, 13 December 2019

Taxation and revenue – Duty on transfers of dutiable property - Whether no duty chargeable on transfers of land as transfers made to trustees to be held solely as trustees for transferors – No change in beneficial ownership – Trust deeds prohibit variation to confer share or benefit on person other than transferor – Trust deeds require trustee to act as directed by beneficiary and confer powers on trustee to sub-divide and sell the property – Whether trust deed provisions inconsistent with requirement property be ‘held’ for transferor – Provisions not inconsistent – Duties Act 2000 s 35(1)(a) – Comptroller of Stamps v Yellowco Five Pty Ltd [1993] 2 VR 529, White Rock Properties Pty Ltd v Commissioner of State Revenue [2015] VSCA 77 applied – Commissioner of State Revenue v Victoria Gardens Developments Pty Ltd (2000) 46 ATR 61 explained and applied.

Conclusion

90. In our opinion leave to appeal should be granted on proposed ground 1 and the appeal should be allowed.

91. It is unnecessary to address proposed ground 2.

<https://jade.io/article/695054>

Colin Fong

## 11 Vacancies

### James Cook University

<b>Lecturer, Law</b> Position Number	XXXXXXXXXX
Division/College	College of Business, Law and Governance Division of Tropical Environments and Societies
Campus Location	Cairns
Classification	Academic Level B
Fraction	100%
Reports To	Academic Head, Law
Supervisor Position Number	
Number of positions supervised	Directly: 0
Date Last Reviewed	November 2019

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## Position Overview

The Lecturer, Law works to strengthen, develop and advance the discipline of Law at JCU, and does so by pursuing scholarship and enthusiastically contributing to teaching, research (including research supervision) and service to the university and the community. The incumbent will engage primarily, as needed, in undergraduate law course and subject design, development and teaching; conduct research activity that aligns with institutional priorities; and perform other academic and service tasks as required.

For more information contact the HOS at [elizabeth.spencer@jcu.edu.au](mailto:elizabeth.spencer@jcu.edu.au)

## Organisational Charts

James Cook University

### Principal Accountabilities

1. Facilitate effective undergraduate (and, where required, postgraduate) student learning across all levels and modes (including face-to-face, online and multi-modal), and thereby fostering a positive student experience, this to include subject design, initiation and preparation of learning resources, delivery or discussion of content, and administration and evaluation of formative and summative assessment, all within required procedures and timeframes.
2. Be familiar with and demonstrate the capability to effectively use and develop modern and innovative teaching technologies to ensure teaching methodologies, learning resources and assessments are contemporary, fit for purpose and effective to promote student achievement of intended course and subject learning outcomes.
3. Engage actively and productively in research and research funding activities that align with JCU's research agenda, Division, and College research priorities.
4. Provide consultation and academic advice, support and encouragement to students.
5. Conduct supervision of the program of study of honours and/or postgraduate students, including Higher Degree by Research candidates.
6. Perform with competence administrative functions, the majority of which are connected with subject delivery and teaching and research.
7. Participate in service, engagement and entrepreneurial activities on behalf of the College and Division, including membership of relevant committees and representation of the College and the University to the broader community.
8. Support the University's commitment to the principles of reconciliation, which exemplify respect for Aboriginal and Torres Strait Islander heritage and the valuing of justice and equity for all Australians.
9. Demonstrate a commitment to the University values.
10. Support the principles of the TropEco program and engage in commitment to JCU sustainability goals and objectives.

### Generic Accountabilities

There are generic responsibilities that apply to all James Cook University staff.

1. The **Lecturer, Law** is required to observe the lawful and reasonable directions, policies and decisions of the University Council, understand and comply with the Enterprise Agreement, the Statutes and Rules of the University, the policies and decisions of the University Council and other appropriate University authorities, as in force from time to time.
2. The **Lecturer, Law** is required to demonstrate a personal commitment to ensure personal safety and the safety of others and contribute to the continuous improvement of our WHS performance. This includes the effective implementation and compliance with James Cook University WHS policies, procedures and safe systems of work, together with all relevant legislation, duties and obligations. Contribute to the continuous improvement of our WHS performance.

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3. The **Lecturer, Law** is required to exercise proper discretion in all matters affecting the well-being of the University which involve public writing or speaking in accordance with the University's Code of Conduct.

### **Special Conditions**

- It is a requirement of this position to travel to other JCU campuses as required.

### **Selection Criteria**

Selection and appointments will be assessed against selection criteria.

#### **Essential**

1. Attainment of (or significant progress towards) a PhD qualification in Law (or cognate discipline), or equivalent substantial research / professional practice experience;
2. Proven capability to plan, prepare and deliver high quality teaching in Law at undergraduate and postgraduate levels, coupled with demonstrated capacity to successfully supervise honours or postgraduate research students;
3. Record of professional and tangible research-related accomplishments, including peer-reviewed publications and/or presentations;
4. Demonstrated ability to inspire and engage the interest and enthusiasm of students coupled with demonstrated capacity to innovate across a variety of learning technologies and diverse learning modes and environments;
5. Commitment to and ability to articulate and advance a sustained future research program and funding plan that aligns with the College's areas of established and developing research priorities for law and/or for law's intersection with areas of College or University research strength, coupled with demonstrated potential to attract research funding and participate in entrepreneurial activity (such as short course delivery, consultancy, etc);
6. Excellent interpersonal skills and ability to work effectively both independently and cooperatively within a team environment, supporting collegiality and cohesion within the department in teaching, research, engagement and service.

#### **Desirable**

1. Willing disposition to consult, liaise and engage with the Cairns legal community, coupled with a strong record of past engagement with community stakeholders;
2. Experience in curriculum development and innovation

## **12 Ernst Mach ASEA-UNINET Grant**

We would like to draw your attention to the **Ernst Mach ASEA-UNINET grant**, awarded by the OeAD-GmbH/ICM on behalf of and financed by the Austrian Federal Ministry of Science, Research and Economy (BWF).

This grant enables PhD students (Maximum age: 35 years) from **Cambodia, Indonesia, Philippines, Thailand and Vietnam** to apply for a PhD Grant (maximum of 36 months) in Austria.

We would hereby like to encourage suitable candidates from the above-mentioned countries who wish to pursue the **Doctoral Program in International Business Taxation (DIBT)** to submit their application to the Program by **February 15<sup>th</sup> 2020** at the latest. The application must be made using the [online tool](#).

We will then be happy to support candidates accepted for the DIBT with their application for the **Ernst Mach ASEA-UNINET grant**, for which the closing date will most probably be March 31st, 2020.

Further details about the DIBT can be found on our website under the following [link](#). Details about the Ernst Mach ASEA-UNINET grant can be found on the OeAD website under

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the following [link](#).

For questions, please contact [caroline.ristic@wu.ac.at](mailto:caroline.ristic@wu.ac.at)

Eva Eberhartinger / Michael Lang / Martin Zagler

### **13 Call for papers and submissions**

#### **Symposium on the Impact of Taxation on the Digital Economy in 2020**

Professor Adrian Sawyer and Vincent Ooi are pleased to invite submissions of papers for a symposium on the Impact of Taxation on the Digital Economy to be held at Singapore Management University School of Law, Singapore on 3 April 2020. The symposium is a collaboration between the UC Business School, University of Canterbury and the School of Law, Singapore Management University. Contributions from academic staff, legal scholars, practitioners, tax administration officials, advisors and postgraduate researchers are welcomed.

The aim is for the papers presented during the symposium to be collated and published as an edited collection. The book is targeted to be launched at the ATTA Conference in Christchurch in January 2021.

The key research questions are as follows:

1. How might taxation impact the digital economy?
2. How might the digital economy impact taxation?

Possible submission themes include:

- Taxation and the digital economy;
- Various aspects of digitalisation on taxation containing significant impacts; and
- Tax policy

#### **Guidelines**

Those participating are encouraged to send an informative abstract by 29 February 2020. Acceptance will be communicated shortly after the close off date.

Final submissions will only be due after the symposium and should:

- Be in English and contain full literary citation of sources; and
- Be in publishable form and submitted with a version in Microsoft Word format;
- Be around 8,000 words in length including footnotes.

Please send submissions to:

[adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz) and [vincentooi@smu.edu.sg](mailto:vincentooi@smu.edu.sg) by 29 February 2020.

For more details, kindly refer to the flyer here:

[http://www.singaporerevenue.com/Digital\\_Tax\\_Call.pdf](http://www.singaporerevenue.com/Digital_Tax_Call.pdf). Questions may be directed to the organisers of the symposium.

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**Austaxpolicy.com Blog, TTPI Working Papers and Policy Briefs**

Both hosted and edited by the **Tax and Transfer Policy Institute**.

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Please follow us on Twitter @Austaxpolicy or sign up to our fortnightly email newsletter. Contributions encouraged and sought as Austaxpolicy Blog enters our second year of publishing short, accessible but not dumbed down articles based on your substantive research, recently published or in progress. If you like what you read, please distribute it among your networks and also circulate the Blog and this call for contributions to others who may be interested.

We also seek well prepared and substantial **Working Papers** to publish in our series, from all disciplines, both on the website and on SSRN (where they will be promoted in tax, public policy lists). Please send your contribution to [tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au) for review.

Finally, we seek **Policy Briefs** for our series which provides an accessible and rigorous explanation of tax issues or concepts for policy-makers, students, academics and interested members of the public. Policy Briefs will be published as a numbered report in PDF format and also as Brief on the Austaxpolicy.com blog. Please contact us at [tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au) , we look forward to hearing from you.

#### **14 Tax and related meetings**

The **2020 ATTA conference** will be hosted by University of Tasmania from 22nd January to 24 January 2020. The theme is: Small Business and Innovation: Does the Taxation Law support or hinder growth?

For the registration see item 3 of this ATTA News.

For more information, please contact:

• Nicky Bawle at [nicky.bawle@utas.edu](mailto:nicky.bawle@utas.edu)

<http://www.utas.edu.au/atta-2020>

The **Tax Institute's** website [www.taxinstitute.com.au](http://www.taxinstitute.com.au) lists many conferences, conventions, seminars, and breakfast clubs. For further enquiries, contact Phillipa Cardigan (02) 8223 0045 or email [phillipacardigan@taxinstitute.com.au](mailto:phillipacardigan@taxinstitute.com.au) or register online at [www.taxinstitute.com.au](http://www.taxinstitute.com.au)

Call the National Events team on 1300 733 842 for more details.

Please contact the National Events Team on 1300 829 338 or by email, [nationalevents@taxinstitute.com.au](mailto:nationalevents@taxinstitute.com.au) Follow us on Twitter @TaxInstituteOz

#### **Overseas**

**American Accounting Association** Calls for paper website <http://aaahq.org/calls/default.cfm>

**Canadian Tax Foundation** <http://www.ctf.ca/ctfweb/en>

**Institute for Fiscal Studies Conferences and seminars**

<http://www1.ifs.org.uk/conferences/index.shtml>

**Institute for Austrian and International Tax Law** 2020 events: The topics of the seminar sessions and other events can always be found at [www.wu.ac.at/taxlaw](http://www.wu.ac.at/taxlaw). Please see the website for most up-to-date information on them.

January 2020

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- January 20, 2020 Colloquium: "Current Developments in European and International Tax Law", Ari Glogower, Aurelio Massimiano
- January 22, 2020 Workshop: "Vienna Multistakeholder Group on Improving Cross border Disputes Resolution: VAT and Disputes"
- January 22-24, 2020 Conference: "Court of Justice of the European Union: Recent VAT Case Law"
- January 23, 2020 Semester closing (in German)
- January 27-February 1, 2020 Seminar: "The Practice of Double Tax Treaties in Case Studies"

#### February 2020

- February 19, 2020 Workshop: "Vienna Multistakeholder Group on Improving Cross border Disputes Resolution: NIF and BRI"
- February 19-21, 2020 Global Transfer Pricing Conference: "Transfer Pricing Developments around the World"
- February 22, 2020 Workshop: "Blockchain and TP"

#### March 2020

- March 16, 2020 KSW-Information Evening, Prof. Rust (in German)
- March 16-17, 2020 Conference: "Tax Transparency and Corruption"
- March 23, 2020 IFA-Event: "Impacts of the US-Tax Reform on European Enterprises"
- March 30, 2020 KPMG-WU-Workshop (in German)

#### April 2020

- April 17-18, 2020 Wiener Bilanzrechtstage: "Kauf und Verkauf von Unternehmen" (in German)
- April 20, 2020 Colloquium: "Current Developments in European and International Tax Law", Stefano Ceccacci, Alessandro Bucchieri
- April 22, 2020 Wolfgang Gassner Memorial Lecture: "Österreich auf dem Weg zur Einheitsbilanz - ein Vorbild für Europa?", Heribert Anzinger (in German)

#### May 2020

- May 04-08, 2020 Advanced Transfer Pricing Course (General Topics)
- May 07, 2020 VAT-Symposium: "Abgrenzung Drittstaat zu Europäischer Union aus umsatzsteuerlicher Perspektive: Systembruch oder Notwendigkeit?" (in German)
- May 11, 2020 Panel Discussion of Lawyers (in German)
- May 14-16, 2020 Conference: "Tax Treaty Case Law Around the Globe" (Tilburg)
- May 18, 2020 Colloquium: "Current Developments in European and International Tax Law", Peter Hongler, Graeme Alan Wood, Jozef Kavuliak
- May 25, 2020 KPMG-WU Workshop (in German)

#### June 2020

- June 08, 2020 Colloquium: "Current Developments in European and International Tax Law", Jens Wittendorff, Katharina Schlücke
- June 15, 2020 27. Vienna Symposium on International Tax Law: "'Tax Covered' – The Scope of Double Taxation Conventions"
- June 18-20, 2020 EATLP Congress

- June 18-20, 2020 Seminar: "Double Tax Treaties in Case Studies – Senior Level"
- June 25, 2020 Semester closing (in German)

July 2020

- July 02-04, 2020 Rust Conference: "Mission Completed? The Implementation and the Lasting Effects of the Multilateral Instrument (MLI)"
- July 06-10, 2020 Advanced Transfer Pricing Course (Benchmarking)
- July 13-17, 2020 CEE Vienna International Tax Law Summer School 2020

September 2020

- September 11, 2020 Klaus Vogel Lecture: "Crossroads of Bilateral Investment Treaties and Taxation"
- September 21, 2020 KSW-Information Evening, Claus Staringer (in German)
- September 21-22, 2020 Workshop: "Tax Transparency and Corruption"
- September 21-25, 2020 Advanced Transfer Pricing Course (Specific Topics)
- September 30, 2020 IFA-Event: "Das Internationale Steuerrecht im Umbruch – vom Steuermodell einer digitalen Wirtschaft zu einem neuen, globalen Besteuerungskonzept" (in German)

October 2020

- October 19, 2020 KSW-Information Evening, Josef Schuch (in German)
- October 30, 2020 WU Transfer Pricing Symposium

November 2020

- November 02-03, 2020 Conference: "DET and VAT"
- November 05, 2020 SWI-Annual Retreat (in German)
- November 06-07, 2020 Symposium on Procedural and Constitutional Law (in German)
- November 09, 2020 KPMG-WU-Workshop (in German)
- November 16, 2020 Colloquium: "Current Developments in European and International Tax Law"
- November 18, 2020 IFA Event – WIN Veranstaltung: "Missbrauch und Steuerumgehung" (in German)
- November 19-21, 2020 Conference: "Recent and Pending Cases at the Court of Justice of the European Union on Direct Taxation"

December 2020

- December 03, 2020 Panel Discussion of Tax Advisor (in German)
- December 14, 2020 KPMG-WU-Workshop (in German)

**International Bureau of Fiscal Documentation.** Various courses in Amsterdam, the Netherlands or in Malaysia or elsewhere. For details, see <http://www.ibfd.org> The IBFD International Tax Academy (ITA) runs an extensive international course program. Generally all courses are held in Amsterdam. Should you require any further information or wish to register please refer to their web site [www.ibfd.org](http://www.ibfd.org) or contact the International Tax Academy at +31-20-554 0160 or by e-mail [ita@ibfd.org](mailto:ita@ibfd.org)

For courses go to <http://www.ibfd.org/Training>

IBFD International Tax Courses - See also <http://www.ibfd.org/Training/Find-course>

Transfer Pricing Masterclass 24-25 February 2020, Amsterdam

Transfer Pricing in a Post- BEPS World - Chinese Perspective 26-27 March 2020, Beijing

Current Issues in International Tax Planning 4-6 March 2020, Amsterdam

Principles of Transfer Pricing 9-13 March 2020, Amsterdam

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Principles of International Taxation 16-20 March 2020, Amsterdam  
6th Africa Tax Symposium 20-22 May 2020, Arusha, Tanzania.  
IBFD Masterclass 18-19 May 2020 as a prelude to the 6th IBFD Africa Tax Symposium,

**International Fiscal Association Congresses** <http://www.ifa.nl/pages/default.aspx>  
IFA 2020 Congress, **Cancun**, Mexico, 4-8 October 2020 <https://www.ifacancun2020.com>

**International Tax Planning Association Forthcoming meetings**  
<http://www.itpa.org/meetings.html>

**2020 SMU David R Tillinghast Global Taxation Conference**, Singapore Management University's School of Law, 31 March and 1 April 2020. The conference is organised by Singapore Management University School of Law, made possible by grant from IFA, and is supported by the OECD Centre for Tax Policy and Administration, University of Lausanne, NYU School of Law International Tax, Tax Academy of Singapore, IBFD, Xiamen University and the UK Chartered Institute of Taxation. Contact  
Sam Sim (Co-chairman of David R Tillinghast Conference 2020)  
Email: [tysim@smu.edu.sg](mailto:tysim@smu.edu.sg)  
Vincent Ooi (Co-chairman of David R Tillinghast Conference 2020)  
Email: [vincentooi@smu.edu.sg](mailto:vincentooi@smu.edu.sg)

**Symposium on the Impact of Taxation on the Digital Economy in 2020**, Singapore Management University School of Law, Singapore, 3 April 2020. The symposium is a collaboration between the UC Business School, University of Canterbury and the School of Law, Singapore Management University. Contributions from academic staff, legal scholars, practitioners, tax administration officials, advisors and postgraduate researchers are welcomed. The aim is for the papers presented during the symposium to be collated and published as an edited collection. The book is targeted to be launched at the ATTA Conference in Christchurch in January 2021.

The key research questions are as follows:

1. How might taxation impact the digital economy?
2. How might the digital economy impact taxation?

Possible submission themes include:

- Taxation and the digital economy;
- Various aspects of digitalisation on taxation containing significant impacts; and
- Tax policy

Please send submissions to: [adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz) and [vincentooi@smu.edu.sg](mailto:vincentooi@smu.edu.sg) by 29 February 2020. For more details, kindly refer to the flyer here:

[http://www.singaporerevenue.com/Digital\\_Tax\\_Call.pdf](http://www.singaporerevenue.com/Digital_Tax_Call.pdf). Questions may be directed to the organisers of the symposium.

Other useful tax and law related conference websites include the

International Bar Association: [http://www.ibanet.org/Conferences/conferences\\_home.aspx](http://www.ibanet.org/Conferences/conferences_home.aspx)

IBFD Course calendar

<http://www.ibfd.org/portal/app?bookmarkablePage=org.ibfd.portal.presentation.TaxCourses>  
International Events and Law Conferences

<http://internationaleventsandlawconferences.yolasite.com>

Conferences in Australia <http://www.conferencealerts.com/country-listing.php?page=1&ipp=All&country=Australia>

New South Wales Bar Association

[http://www.nswbar.asn.au/docs/professional/prof\\_dev/CPD/programme/index.php](http://www.nswbar.asn.au/docs/professional/prof_dev/CPD/programme/index.php)

Law Council of Australia <http://www.lawcouncil.asn.au/lawcouncil/index.php/conferences>

Practising Law Institute <http://www.pli.edu/>

New York County Lawyers Association <http://www.nycla.org>

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American Bar Association Taxation CLE topics  
[http://www.americanbar.org/cle/cle\\_courses\\_by\\_topic/taxation.html](http://www.americanbar.org/cle/cle_courses_by_topic/taxation.html)  
New York Bar Association <http://www.nysba.org/>  
Hieros Gamos Worldwide Law Events Calendar <http://www.hg.org/legal-events.asp>  
For Australian ones <http://www.hg.org/legal-events-australia.asp>  
For social sciences and humanities conferences, meetings etc, see Mind: The Meetings Index  
<http://www.interdok.com/mind>  
See also the magazine *Australian Conference & Exhibition Diary*, Vamosi Information Publication.

## **15 Recent publications**

**Bold** indicates ATTA members. Readers are encouraged to notify the Editor of recently written publications for notification, in these pages. Please note some of the overseas publications listed may not yet be available locally.

### **Local**

*Austaxpolicy*: The Tax and Transfer Policy Blog <<http://www.austaxpolicy.com>> Recent postings include:

Happy Holidays from Austaxpolicy, Mathias Sinning, **Miranda Stewart** and **Sonali Walpola**,

23 December 2019

The International Seabed Authority and the Future of Tax, **Micah Burch**, 20 December 2019

Influencing Consumers to Choose Low-Emission Motor Vehicles, Marize de Villiers, 19 December 2019

(2019) Vol 21(1) *Journal of Australian Taxation*

**Nethercott, Les**; Gonzaga, Livia & Ozdil, Esin ‘Country – by – Country Reporting: A New Dimension in Taxpayer Compliance Obligations in Australia’

**Barrett, Jonathan** ‘The Role of Taxes in Promoting the Experience of Home for Tenants’

**Freudenberg, Brett & Mortimore, Anna** ‘The Firm: Re-thinking tutorials to provide greater authenticity for future tax professionals’

Bayliss, Myles ‘Universal Basic Income: The Potential Impact on the Australian Tax System’

(2019) Vol 21(1) *Journal of Australian Taxation*– Special Edition – New Zealand

Scobie, Matthew (Kāi Tahu) And Love, Tyron Rakeiora (Te Ātiawa) ‘The Treaty and the Tax Working Group: Tikanga or Tokenistic Gestures?’ 1

**Pavlovich, Alison** ‘Striving for Intergenerational Wellbeing’

**Barrett, Jonathan & Makale, Kathleen** ‘The Environment Is Not an Externality: The Circular Economy and the Tax Working Group’

**Morrissey, Suzy** ‘Women and the Tax Working Group’

**Maples, Andrew & Yong, Sue** ‘The Tax Working Group and Capital Gains Tax in New Zealand — A Missed Opportunity?’

Walker, Ben ‘Analysing New Zealand’s Digital Services Tax Proposal’

### **Overseas**

*Asia-Pacific Tax Bulletin* Number 6 - 2019

China (People’s Rep) - The Present State and Future Prospects of China’s International Tax Administrative Litigation System -Chen Jingxian

China (People’s Rep) - The TCI Case – A Milestone Case for China Taxing Offshore Indirect Shares Transfer - Na Li

India - Advance Pricing Agreement – Indian Experience - Sanjeev Sharma

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Indonesia - Is Indonesia Benefitting from the Multilateral Instrument? Chintya Pramasanti and Christine Tjen  
Myanmar - Recent Developments in Myanmar Tax Law - Jack Sheehan and Diberjohn Balinas

*British Tax Review* Issue 5 2019

Editorial - Joint General Editors 581

Current Notes

DAC 6: the UK's proposals for implementation - Brin Rajathurai

Case Notes

HMRC v Joint Administrators of Lehman Brothers International (Europe) (In Administration): the meaning of "yearly interest" for UK withholding tax purposes - Stuart Pibworth

R. (on the application of Derry) v HMRC: the first judicial steps forward from the Rewrite - Matthew Paterson

Articles

Company Size Matters - Ruth Mason and Leopoldo Parada

Collection and Administration of Taxes During the Reign of King George III: the Example of Jane Austen's Brother, Henry, Receiver-General of Taxes for Oxfordshire 1813–1816 - **Fiona Martin**

Book Reviews: Taxing the Digital Economy: The EU Proposals and Other Insights (IBFD, 2019), by P Pistone and D Weber (eds) - Christiana HJI Panayi

*Bulletin for International Taxation* Number 12 - 2019

OECD/International - The Evolution of Controlled Foreign Corporation Rules and Beyond - Brian J Arnold

Netherlands/OECD/International - The Challenges of Client Tax Integrity Testing for Banks in the Netherlands (and Soon Elsewhere?) - Ronald Russo and Ronald Hein

United States - The Multistate Tax Commission's Alternative to Litigation - Roxanne Bland  
Tax treaty monitor

OECD/International - Is the Arm's-Length-Principle-Based Authorised OECD Approach to the Attribution of Profits to a Permanent Establishment Losing Its Authority? Rasmi Ranjan Das

Germany/India/Korea (Rep) - Tax Treaty Relief at Source for German Partnerships: Courts Take Different Positions in India and South Korea - Andreas Kempf

Argentina/OECD/International - Taxation of the Ride-Sharing Economy: Source Taxation through Service Permanent Establishment Provisions Revisited – The Case under the Argentine Treaty Network - Guillermo O. Teijeiro and Juan Manuel Vázquez

OECD/International - The Principal Purpose Test: A Critical Analysis of Its Substantive and Procedural Aspects – Part 2 - Ian Zahra

United States/OECD/International - Recent (2019) US Tax Treaty Developments: Dispute Developments in Non-EU Jurisdictions, Treaties Awaiting Ratification and the Advance Pricing Agreement Programme - Nana Ama Sarfo

Cipollini, Claudio *Special tax zones and EU law: theory, implementations, and future challenges*, Kluwer Law International, 2019; ISBN 9789403518855, €127.00

*European Taxation* Number 11 - 2019

United Kingdom - A Critical Examination of the Proposed UK Digital Services Tax - Belema R Obuoforibo

France - The French Crusade to Tax the Online Advertisement Business: Reflections on the French Google Case and the Newly Introduced Digital Services Tax - Bob Michel

European Union - Are Turnover-Based Taxes a Suitable Way to Target Business Profits? Dario Stevanato

EU update – Commission, Mery Alvarado; Court of Justice, Mery Alvarado

[Type here]

CFE news - Opinion Statement on European Tax Advisers' Policy Priorities for the 2019-2024 EU Mandate  
CFE Board and CFE Technical Committees  
What's going on in ...  
Poland - Collective Investment Schemes Claiming a Withholding Tax Refund in the European Union (in Particular, Poland) - Magdalena Kostowska and Steffen Gnutzmann

**Markham, Michelle** 'The comparative dimension regarding approaches to decision-making in international tax arbitration', in Farrar, JH; Lo, VI & Goh, B (eds), *Scholarship, practice and education in comparative law: a festschrift in honour of Mary Hiscock*, Singapore, Springer, 2019

**Markham, Michelle** 'Arbitration and tax treaty disputes', *Arbitration International*, aiz023, <https://doi.org/10.1093/arbint/aiz023>

Mann, Roberta; **Martin, Fiona** and Butcher, Bill 'Saving the planet by cutting corporate taxes: a comparative case study analysis' (2019) 23(1) *Florida Tax Review* (forthcoming)

Yilmaz, Serdar & Zahir, Farah (eds) *Intergovernmental transfers in federations*, Cheltenham, Glos, UK, Edward Elgar Publishing Ltd, 2020

Foreword by Richard Bird

1 Introduction to the volume 1 - Serdar Yilmaz and Farah Zahir

Part I Conceptual Issues

2 The architecture of intergovernmental transfers: principles and practice in low- and middle-income countries - Roy W Bahl Jr

3 Issues in intergovernmental fiscal transfers: public finance and political economy considerations - Serdar Yilmaz and Farah Zahir

4 The practice of fiscal equalization: a political economy clarification - Bernard Dafflon and François Vaillancourt

Part Ii Intergovernmental Transfers in Mature Federations

5 The German model of addressing vertical and horizontal fiscal imbalances - Paul B. Spahn

6 The United States grant system - Howard A. Chernick

7 Federal finance arrangements in Canada: the challenges of fiscal imbalance and natural resource rents - Marcelin Joanis and François Vaillancourt

8 Revenue and expenditure needs equalization: the Swiss answer - Bernard Dafflon

9 Intergovernmental fiscal relations in Australia - Bob Searle

10 The economic impacts of horizontal fiscal equalization as practised in Australia - Jonathan Coppel

Part Iii Intergovernmental Transfers in Evolving Federations

11 Intergovernmental fiscal transfers and performance grants in Brazil - Deborah L Wetzel and Lorena Viñuela

12 Intergovernmental fiscal transfer system in Argentina: historical evolution, current performance and reform options to promote efficiency, equity and transparency - Marco Larizza and Julian Folgar

13 Evolving role of the Finance Commissions in India in the last 25 years - Farah Zahir

14 Emerging trends in fiscal transfer systems in selected federations: implications for India - Jorge Martinez-Vazquez

Part Iv Intergovernmental Transfers in Unitary Federations

15 Intergovernmental fiscal transfers in Kenya: the evolution of revenue sharing under new devolution in a quasi-federal system - Jamie Boex and Paul Smoke

16 Reforming vertical programmes: the case of South African local government - David Savage

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## 17 Quotable quotes

On Ken Dodd, whom he defended on tax evasion charges:

"Some accountants are comedians, but comedians are never accountants."

Source: 'George Carman QC: a career in quotations' *The Guardian* 3 January 2001

<https://www.theguardian.com/uk/2001/jan/02/4>

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"Almost a third of big companies are still not paying any tax despite a government crackdown that has included forcing technology multinationals to admit they do business in Australia, new data shows.

Taxation office deputy commissioner Rebecca Saint said the data, which covers 2,200 companies, showed good progress in cracking down on corporate tax evasion but more needed to be done.

"These are a good set of numbers," she said.

She said the ATO wanted to improve voluntary compliance with tax law by big companies from 92% to 94%.

"We are still challenging corporates and ourselves to improve that voluntary compliance even further," she said.

The latest results, released on Thursday, show 32% of the companies in the data set paid no tax in the 2017-18 year – down from 36% three years previously.

About \$3.8bn extra revenue was squeezed from foreign multinationals, partly as a result of the government's crackdown on tech tax dodgers such as Google and Facebook – a strategy Saint said had locked in a flow of revenue into the future.

Tax receipts from the companies in the data set were up \$6.6bn in total, mainly due to soaring commodity prices."

Source: Butler, Ben 'ATO data reveals almost a third of big companies still not paying tax in Australia' *The Guardian Australia* 12 December 2019

<https://www.theguardian.com/australia-news/2019/dec/12/ato-data-reveals-almost-a-third-of-big-companies-still-not-paying-tax-in-australia>

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"Even at the Nanking Restaurant in Campbell Street which was the only establishment large enough to host major community banquets the lighting was dim, furnishings comprised wooden tables and long forms for seating and there was not a tablecloth in sight. The Nanking took up two floors, with VIPs such as the Police Commissioner and the Commissioner of Taxation regularly entertained on the upper floor."

Source: Shin Wah, Annette & Atikin, Greg *Banquet: ten courses to harmony*, Moorebank, NSW, Doubleday, 1999 p 133

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“The principality of Hutt River in Western Australia, formed in 1970 by farmer Leonard Casley in protest against wheat quotas.

Fed up with bureaucracy, he seceded from Australia, crowning himself "Prince Leonard" and ignoring the Australian Tax Office.

"One day he was a wheat farmer...getting covered in dust and chaff and the next day he was a prince," Pastoralists and Graziers Association of WA president Tony Seabrook said.

Prince Leonard, who abdicated to his son Prince Graeme two years ago, died in February, aged 93, leaving a \$3 million tax bill.”

Source: King, Jennifer ‘Remembering those remarkable Australians who died in 2019’ ABC News 30 December 2019 <https://www.abc.net.au/news/2019-12-30/lives-we-lost-in-2019/11408032>



## ATTA News February 2020

<https://www.business.unsw.edu.au/about/schools/taxation-business-law/australasian-tax-teachers-association/newsletters>

Editor: Colin Fong, *Teaching Fellow, UNSW Law*, UNSW Sydney [c.fong@unsw.edu.au](mailto:c.fong@unsw.edu.au)

ATTA website: <https://www.business.unsw.edu.au/about/schools/taxation-business-law/australasian-tax-teachers-association>

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### 1 Presidential column

Hello and welcome to the February ATTA Newsletter. A particular welcome to those who are receiving the newsletter for the first time. Our ATTA Newsletter Editor, Colin Fong, tells me that the newsletter now goes out to over 600 recipients.

It was lovely to see many of you at the ATTA conference in Tasmania a few weeks ago. And, of course, thanks are due to John McLaren, John Minas and their team for organising a great combination of engaging presentations and fun social functions. Thanks to all our keynote speakers and presenters for your contribution to a successful conference. We did not have an official photographer at the conference this year so if anyone has photos from the conference that they are happy to share, please send these to me ([lisa.marriott@vuw.ac.nz](mailto:lisa.marriott@vuw.ac.nz)) and we will make these available on the ATTA website.

The tribute to our co-Patron Associate Professor Cynthia Coleman (on her official retirement from her role at ATTA) took place at the conference dinner. The heartfelt tribute was given by Professor Michael Walpole and is repeated at item [3] below for those of you who were not able to attend the conference.

While speaking of those who were not at the conference, we recognise that several of our long-standing ATTA community were not able to attend the conference for a range of personal reasons. Your presence was missed and we hope to see you at a future ATTA/tax event again before too long.

There are a number of achievements and awards from the conference that I would like to highlight:

- An ATTA Hill Medal was awarded to Professor Brett Freudenberg for his significant contribution to tax teaching.
- The Patron's Award for Judicial Engagement was awarded to Professor Craig Elliffe for his article published in the New Zealand Universities Law Review: *Interpreting International Tax Agreements: Alsatia in New Zealand?*
- Conference prizes were awarded to:
  - Amna Tariq Shah (Swinburne University) for the Best PhD Paper
  - Saré Pienaar (University of Pretoria) for the Best PhD Presentation
  - Dr Jonathan Barrett (Victoria University of Wellington) for the Best Research Paper
  - Dr Rob Whait (University of South Australia) and me (Victoria University of Wellington) for the Best Research Paper

If you would like to submit an article to the 2020 edition of the *Journal of the Australasian Tax Teachers' Association (JATTA)* please note that articles will need to be submitted by 29 May 2020. Please send your article to [john.mclaren@utas.edu.au](mailto:john.mclaren@utas.edu.au) before that date. Early submissions are welcome.

All the best,  
Lisa  
Lisa Marriott  
President – ATTA

## **2 President's Report**

It has been a great privilege to be in this role over the past year. Being in this role has made me very aware of the multiple support teams and individuals that keep this organisation as strong and as well connected as it is. Therefore, I would like to start by thanking some of the people that go to great lengths to keep us connected and administratively organised as an organisation.

First – enormous thanks to Colin Fong, who as editor of the ATTA Newsletter does so much behind the scenes to make sure we are kept up to date with what everyone is doing. Colin often tells me about things that happen in NZ before I know about it – so he really is not only well connected, but willing to use those connections for the benefit of all of us.

Second – to the ATTA Executive – and particular thanks to Brett Bondfield. All the Executive team put in a great effort, but the lions share often falls to Brett because of his significant institutional knowledge. Again, it's one of those roles where you don't see the work that goes on behind the scenes – and I know Brett often puts aside much of his Sundays to make sure that ATTA tasks get done.

Third – thank you to the conference organisers for this conference. One of the great skills of conference organisation is in making a conference look like it has been effortless to organise. We have benefited from some great Keynote speakers this year: Professor Henry Lischer, Dr Keith Kendall, Karen Payne, Scott Treatt and our Patron, Justice Pagone. I would also like to extend our gratitude to our sponsors. The conference benefits greatly from their presence and their financial assistance: Oxford University Press, ThomsonReuters, Wiley and UniSuper.

Thanks also to Annette Morgan, Donovan Castelyn, Helen Hodgson and their team for the publication of a great edition of JATTA this year.

I would also like to thank Maree Magafas from UNSW who helps every month with publishing the Newsletter – as well as many other things during the year, such as making sure we all have access to the photos after the conference.

We have introduced some new initiatives during the year – and continued some of the ongoing ones, including:

- **Introducing the inaugural Patron’s prize for engagement with the judiciary** – awarded to Craig Elliffe from Auckland University.
- **Advancing Women in Tax Academia Scholarship** – to assist in attendance and presentation at this conference. This was awarded during the year to Christine Peacock from Federation University.
- **The ATTA Hill Medal**, which was awarded to Brett Freudenberg for outstanding contributions to tax teaching
- **Introduction of the Women in Tax breakfast initiative** – organised by Bronwyn McCredie.
- **Ongoing support for OUP ATTA Doctoral Series.** OUP agreed to provide ongoing financial support for the OUP ATTA Doctoral Series. However, the panel decided not to make an award this year.

I look forward to another great year for ATTA in 2020.

Lisa Marriott

### **3 Tribute to Cynthia Coleman**

I have been asked to say a few brief words tonight to recognise the fact that our Patron - Professor Cynthia Coleman - has indicated that she will be retiring from the role of Patron. My friendship with Cynthia is one of the examples of extraordinary luck that I have had in life. Soon after I arrived in Australia in 1994, I attended a CCH conference about computers and the teaching of law. There I met Cynthia – that was the lucky bit. What we learned there was soon obsolete – this partly explains the dubiousness with which I, and I know Cynthia, regard computer technology. But, it was my great good fortune that Cynthia Coleman befriended me and the benefits of that have been more enduring.

Hers has been a wonderful enriching friendship for me. At the time Cynthia was the most senior female tax academic in Australia. In terms of tax aristocracy, I had struck very lucky indeed. She had a successful textbook, co-authored with Geoff Lehmann – who was another tax “legend”. She was widely known as an excellent and passionate tax teacher with Geoffrey Hart and they had built a rigorous highly regarded undergraduate tax program at the University of Sydney. Scores of senior tax partners started their tax career in her class. Cynthia was going to go on to achieve many great things. Not least the ATTA Medal, membership of the inaugural Tax Practitioners Board, as well as an Associate Professorship, running the Tax Administration Course on the Masters course at Sydney University, and (of course) editing Australian Tax Forum where I came to see just what a huge contribution she had made.

She also became one of our ATTA Patrons. All this while she and her husband Richard raised their two wonderful daughters – whom I regard as two of the finest young women I know.

For me, one of the things that stood out was Cynthia’s readiness to befriend and encourage and support a new academic like me – who knew no one. For those of us who have experienced it, she has been a guide, a sounding board, a confidante.

It was this warm and welcoming disposition and her remembering what it was like to be just starting out that has made her such an excellent Patron to ATTA. In that role she has encouraged scores of us and in her many low-key ways kept us true to the passion for our work and our standards.

If we do not individually show how much we care about the tax discipline that we both teach and are also custodians of – then what hope is there of lighting the flame in the next generation?

So, it is a tremendous honour for me to say tonight on your behalf “thank you Cynthia” for your support of all of us in ATTA. Thank you for the guidance, the personal references, the support to our Presidents and Committees over the years. And thank you for caring – because you always remind us that what we do is actually important.

Michael Walpole

#### **4 ATTA Women in Tax Breakfast**

Without any doubt I am very pleased I attended the ‘Women in Tax Breakfast’. Everyone was so welcoming. I left the breakfast feeling I have made a couple of long-term friends. The event was really worthwhile professionally. All three of the keynote speakers – Cynthia Coleman, Catriona Lavermicocca, and Lisa Marriott – were absolutely fabulous. They were very open about their own experiences as tax academics. Their genuine-ness (if that’s a word) encouraged other women in the room to share their stories. The result was a great discussion. I have already implemented one of Cynthia’s pieces of advice. It worked! I am new to academia and the whole event reassured me that becoming a tax academic was the right choice. Where else, but ATTA’s breakfast, would I find so many brilliant, beautiful, caring and strong women – fascinated by tax – in place at 8 am? I am looking forward to attending our next event and seeing the network growing.

Victoria Plekhanova  
Massey University

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Thursday morning at the recent ATTA conference in Hobart featured the Women in Tax (WIT) breakfast. Planned by Senior Lecturer Bronwyn McCredie from Queensland University of Technology, the program posed the question “Where are all the women in tax?” and included a panel discussion with three senior tax academics: Associate Professor Cynthia Coleman (patron of ATTA) from the University of Sydney; Associate Professor Catriona Lavermicocca from Macquarie University; and Professor Lisa Marriott (ATTA Chair) from Victoria University of Wellington.

The program was well attended, however, with a significant lack of Y chromosomes. McCredie noted at the outset that men were invited and welcomed, but somehow none of them made it into the room. The program opened with a discussion of a recent paper by Ann O’Connell (Melbourne University). In the paper,<sup>1</sup> entitled “Where are all the women in tax?,” O’Connell noted that although the numbers of women studying tax at university are virtually equal to those of men, women are not well represented at senior levels in the profession. She examined two potential causes for the disparity: 1) women choose not to be promoted for a variety of reasons; or 2) elements of unconscious bias work against women reaching senior positions. The disparity is concerning for both equity and efficiency reasons, but also may be

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<sup>1</sup> (2019) 48 AT Rev 5

harming the profession as a whole by limiting the unique contribution of women, who have special skills in decision-making.

Women in the United States have made contributions to this vein of scholarship as well. Temple University law professor Alice Abreu recently wrote an article posing the question “why is the tax bar so white?,” which address the lack of diversity at senior levels in the tax profession in the United States.<sup>2</sup> Writing in the wake of the 1986 Tax Reform Act, which significantly reduced tax progressivity in the United States, Tulane University law professor Marjorie Kornhauser described the importance of including a woman’s perspective on tax policy, opining that a progressive tax structure reflects a feminine vision of caring for others.<sup>3</sup>

Kornhauser’s description of the feminine character as a “carer” is reflected in the first potential cause for the lack of women at senior levels in the tax profession—women tend to take primary responsibility for raising children and caring for elders. These responsibilities may result in women taking “breaks” in their career trajectory or choosing to forgo applying for more senior position.

McCredie posed a series of questions to the panel for discussion.<sup>4</sup> For this post, I will focus on the most interesting one from my perspective: “how do you think you beat the odds?” Coleman noted that she had experienced the challenges of raising children while developing her academic career. She emphasized the importance of life balance, as well as persistence. Indeed, persistence was a common theme among the panelists. Lavermicocca credited her success to her practice of saying “yes” to opportunities. Interestingly, she said that her university had recently changed the review process for academics, allowing the service component of the review to replace some of the scholarship component. This encouraged her to take on a more significant service role as an associate dean.

Marriott, our ATTA chair, is obviously no stranger to service, and her scholarly production is also impressive. She was promoted to full professor only eight years after getting her PhD. Marriott confessed that she is an introvert (who would have known!) and one of her secrets for success is seeking opportunities outside of her comfort zone.

The panelists and the audience also discussed mentorship and self-promotion. I learned the difference between mentorship and sponsorship, which I had never considered before. Mentorship is about support in the workplace. Sponsorship is about advocating on behalf of a junior colleague when advancement decisions are being made. Women tend to get over-mentored and under-sponsored compared with their male peers. There is no reason why a mentor could not also be a sponsor, but as a senior academic myself, I will certainly remember the distinction and plan to be a sponsor of my junior colleagues.

Women tend to be less comfortable with self-promotion than their male peers. Self-promotion is an important skill to learn. The panel explored some methods for self-promotion, including

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<sup>2</sup> Alice G. Abreu & Richard K. Greenstein, Rebranding Tax/Increasing Diversity, 96 Denv. L. Rev. 1 (2018).

<sup>3</sup> The Rhetoric of the Anti-Progressive Tax Movement: A Typical Male Reaction, 86 Mich L. Rev. 465 (1987).

<sup>4</sup> Why do you think there are so few women in tax?

How do you think you beat the odds?

How did/do you sell/market yourself?

What do you believe is your academic or personal brand? How would you describe yourself?

Did you intentionally create your academic brand? If so, how? And if not how did it develop?

Have you used any specific tools to develop your brand?

Did you use any platforms to promote yourself? (e.g. Twitter, LinkedIn, Eprints, University Webpage, google Scholar, Publons, ResearchGate, The Conversation, Austaxpolicy blog)?

blogs, LinkedIn, Facebook and Twitter. In addition, networking can provide both mentorship and self-promotion. The ATTA Advancing Women in Tax Scholarship provides funding to assist new, female tax academics to attend and present at ATTA conferences, which provide excellent networking opportunities.

In conclusion, the best way to bring more women into the senior ranks of the tax profession is to change the culture. We should strive to find value in the diverse contributions of all our community members. The conversation will continue, with thanks to the organizer, the panelists, and all the participating audience members. We hope to have some men join us next year!

Roberta Mann  
Mr & Mrs LL Stewart Professor of Business Law  
University of Oregon

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The opportunity to form valuable, supportive networks at ATTA conferences with tax colleagues from different institutions has always been a source of positive encouragement. The Women in Tax breakfast organised by Bronwyn McCredie was an opportunity to more intimately be encouraged by a smaller group of colleagues. Fifteen years ago when I first became a full time academic I don't think I would have realised the importance of such an initiative. I may have found such an idea discriminatory against men. However, the fact that there are comparatively few women in senior tax roles suggests that this is an issue worth discussing, and that women in tax should be encouraged.

A panel comprising of Cynthia Coleman, Catriona Lavermicocca and Lisa Marriott were interviewed on why they got into tax, what their brand is, and their advice for young academics. Cynthia's advice, "roll with the punches. You're always going to get knock backs. Have confidence in yourself" was particularly encouraging. The ATTA community is full of people with amazing talent and potential, irrespective of their gender and individual circumstances. I applaud this opportunity to positively encourage women to achieve their best, and regard myself fortunate to have benefited from this breakfast, as well as ATTA's Promoting Women in Tax Scholarship (implemented and administered by Professors Fiona Martin and Lisa Marriott).

Christine Peacock  
Federation University Australia

## **5 ATTA's 33rd Annual Conference**

The 33 Annual ATTA conference will be hosted by the UC Business School at the University of Canterbury from 20 to 22 January 2021 in Christchurch, New Zealand. It will be held at Rydges Latimer in the Christchurch CBD, rather than at the University of Canterbury (UC). Bookings for a limited number of discounted rooms can be made direct to Rydges Latimer at: <https://www.rydges.com/private-page/australasian-tax-teachers-association/>

The welcome reception will be held at the International Antarctic Centre near Christchurch International Airport, with the conference dinner at the Great Hall at the Arts Centre in the CBD (part of UC's campus before it moved out of the city during the 1960-70s). A farewell BBQ will be held at Rydges Latimer at the conclusion of the conference.

The theme is: **The Future of Tax: More than Just Politics?**

More details will follow over the coming months.

Adrian Sawyer

## **6 ATTA Conference 2020 first timers' views**

The 32nd ATTA Conference, held in January 2020 and hosted by the University of Tasmania at the Old Woolstore Hotel in Hobart, was my first ATTA conference.

Having never attended an ATTA conference previously, I had some anticipatory trepidation about attending the event, however I was pleasantly surprised at the warm welcome I received from the numerous tax academics, research students and professionals in attendance. It was immediately apparent from my engagement with other attendees that there was a spirit of collaboration and collegiality that existed amongst all the delegates, particularly the senior tax academics and professionals. Two very notable experiences which stood out for me:

### *Networking opportunities*

There were a few familiar faces at the event who were great to see – my fellow academics from the Monash Business School.

However, what I was particularly grateful for was meeting a wonderful network of so many gifted and hard working professionals who were well-informed, supportive and generous with their knowledge and advice. Thank you!

As a very new female tax academic, I was truly inspired by the Women in Taxation breakfast event. It was a wonderful experience to learn from the esteemed female tax academics who so candidly presented their stories and experiences. I also really enjoyed a very well organised conference dinner held at the beautiful Glen Albyn Estate.

### *Technical expertise*

The presentations by keynote speakers, PhD research students and delegates were remarkable. The level of technical expertise, reflecting a wealth of knowledge and hard work amongst the tax fraternity in attendance, really inspired me to consider a diversity of taxation issues more broadly and gave me numerous avenues for future research and study.

ATTA certainly exceeded my expectations. Thank you ATTA for the wonderful opportunity to network with many tax academics and professionals, and for providing an informative and educational experience. I am looking forward to 33rd ATTA conference 2021 hosted by the University of Canterbury in Christchurch, New Zealand.

Swapna Verma  
Monash University

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I attended and presented a paper at the ATTA Conference 2020 in Hobart. Though this is not my first time attending ATTA conferences, I was thrilled to see familiar faces and to make new friends during the conference. I was particularly impressed by the excellent organisation of the conference and by high quality presentations that skilfully incorporated technical analysis with deep policy insights. It was truly exciting for me to meet and communicate with so many talented tax people in the conference. A return is certainly a must.

Yan Xu  
UNSW Sydney



Left to right: Chris Wallis, Ken Devos, Ali Yousefi & Colin Fong at the Welcome Cocktails, the Henry Jones Art Hotel, Hobart on 22 January 2020. Photo courtesy of Ali Yousefi.

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**Confession:** I'm not a teacher of tax, not even a tax accountant. So how did I manage to break into this collegial group of taxperts? I'm an environmental and social accountant and it seems, in this environmental crisis, are worlds are colliding now more than ever. My two tax colleagues and myself are writing a paper on how taxation can support a more circular economy and your conference was the ideal setting to have our proposal heard: thank you!

This was my first ATTA conference, not my last. My first impression: one of hope. I was lucky enough to time-keep for one of the first sessions and I soon realised we were not alone in thinking tax could play a major role a more sustainable future. The juxtapose of potential solutions to climate change against the devastating and unprecedented bushfires was not unnoticed.

Something else I've learned about tax teachers is that they know how to dine well. What a beautiful dinner venue, with delicious food and wine! Thank you, John McLaren and John Minas – well done!!

Terese Fiedler  
University of Tasmania

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ATTA's 2020 Hobart Conference was my first ATTA conference. At the urging of my PhD supervisor Associate Professor Antony Ting, who believed it would be a beneficial experience, I signed on for my first conference. My initial motivation for attending the conference was to present my PhD research to date and to obtain feedback from experienced



tax academics. I was not disappointed as I received a number of questions and comments (from the floor and through one to one interaction) which I have taken on board and which will potentially enhance my research. It was illuminating to me to learn of the incidence and wide-ranging tax research being undertaken by other PhD researchers in Australasia (and South Africa). Listening to other PhD presenters' journeys, research areas and preliminary findings was interesting and instructive. The discussion on methodology and method was an important one especially with greater emphasis being, appropriately, given to this element of PhD theses. The PhD presentation session of ATTA conferences is certainly a worthwhile and rewarding experience from a presenter's perspective and hopefully of interest to participants through their provision of helpful feedback and learning of the diverse tax research being undertaken in Australasia.

The quality and diversity of papers delivered (and written) at the conference was excellent with thought-provoking and interesting topics. There seemed to be at least one subject area at each session which was of interest to me. The location city (its food, wine and geographical setting) certainly enhanced the conference and was a welcome alternative to the heat and fires elsewhere in Australia at the time.

Peter Stinson  
University of Sydney

## **7 Patron's Award for Judicial Engagement**

In 2019, the Hon Tony Pagone, former judge of the Federal Court and Patron of ATTA, introduced the ATTA Patron's Award for ATTA members. The award is for tax academic engagement with the judiciary. The aim of the award is to draw attention, both to members of the academy and members of the judiciary, to the importance of continuing dialogue between the two.

The inaugural award was announced at the 2020 conference in Tasmania. The recipient was Professor Craig Elliffe from the University of Auckland, for his article published in the New Zealand Universities Law Review titled *Interpreting International Tax Agreements: Alsatia in New Zealand?*

Lisa Marriott

## **8 Arrivals, departures and honours**

Dr **Keith Kendall** was appointed to a full time as a member of the federal Administrative Appeals Tribunal for a five year period effective from 25 February 2019. Keith is cross-listed on both the Migration and Refugee Division and the General and Other Division (hearing tax, small business tax and tax agent matters on the latter).

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**Swapna Verma** is currently a lecturer in the Department of Business Law and Taxation at the Monash Business School, Monash University. Prior to her appointment, Swapna joined the Monash Business School as a teaching associate and assistant lecturer. Her primary areas of teaching are in taxation law and business taxation.

Swapna holds a Bachelor of Science (Psychology), Bachelor of Laws and Master of Laws (Taxation) from University of New South Wales. She is also admitted to practice as a solicitor of the Supreme Court of New South Wales.

Prior to joining Monash University, Swapna practiced as a taxation lawyer and consultant at PwC, Sydney and Melbourne, working in corporate tax, tax controversy and the tax technical knowledge centre (TTKC). She also practiced as a commercial lawyer in a number of highly regarded corporate law firms in Sydney.

Swapna is particularly interested in research studies relating to taxation reform, tax policy, tax administration and anti-avoidance.

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**John Tretola** since leaving Adelaide University he has been a sessional tutor and lecturer at Adelaide, Flinders and Federation Universities part-time teaching mostly in tax but also in commercial and international business law. John has also now completed and submitted his PhD thesis on 'towards a gold standard of a general anti-avoidance rule' and this would not have been possible without the wonderful support and guidance of Professor Julie Cassidy who became one of his supervisors in the year or so before completion. At the end of January 2020 he accepted a permanent teaching position in the Business School at Notre Dame University in Sydney and he is looking forward to teaching business law and accounting this semester.

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**Yan Xu** is Scientia Fellow and Associate Professor in the School of Taxation and Business Law at UNSW. Prior to joining the School in September 2019, she was an Associate Professor in the Faculty of Law at the Chinese University of Hong Kong (CUHK), where she taught and researched tax law for seven years (2012-19). She was awarded Fulbright Senior Research Scholar 2014-15 by the United States Government of State and Hong Kong Research Grants Council and invited as a Visiting Fellow at Columbia Law School in 2014-15 to conduct a research project on tax reform, the rule of law and representative government. She has held a number of international academic scholarships at international institutions including the University of Cambridge, New York University, the University of Melbourne and UNSW. She has published in a range of international journals, presented papers at high-level international and regional conferences, made presentations on invitation from prominent international bodies, including the Australian Commonwealth Treasury, and is often invited to act as referee for highly-ranked law journals and academic books. Most recently, she was invited as a panellist at the International Fiscal Association (IFA) Annual Congress 2017 seminar series on international indirect taxation. Her research interests include comparative tax law and policy, international taxation, history of tax law and environment taxation.

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**Peter Stinson's** working life has been spent at large law and accounting firms predominantly in advising in the areas of corporate taxation, international tax (taxation of non-residents and foreign source income of residents including tax treaty interactions, withholding taxes), taxation of trusts and partnerships and taxation of consolidated groups. Having completed undergraduate commerce and law degrees (UNSW), Peter also completed a Master of Laws (University of Sydney) in taxation and company law subjects. His research interests are in trusts, partnerships, treaties, international taxation (CFCs and treaties), statutory interpretation and taxation of consolidated groups. Peter's current PhD research brings together his interests in trusts, partnerships and the taxation of consolidated groups.

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**Donovan Castelyn** from Curtin University and Curtin Tax Clinic was nominated as a finalist for the Tax Institute Emerging Tax Star award, which is given to a developing tax

professional who has demonstrated commitment and passion in building their tax career. The winners of The Tax Adviser of Year Awards 2020 will be announced at The Tax Summit Gala Dinner at the International Convention Centre (ICC), Sydney on Thursday, 12 March 2020.

## **9 ATTA people in the media**

### **Collins, Richard**

'SCG spectators forced to witness another dull dead-rubber', news.com.au 6 January 2020 video accompanying this story.

Photo of RC at *Sydney Morning Herald* 6 January 2020 page 1 and pages 14-15. RC reports this is their 11th year of dressing up.

### **Kenny, Paul**

Blurred photo of PK at *Sydney Morning Herald* 6 January 2020 pages 14-15

### **Walpole, Michael**

At the Jane McGrath Day, Sydney Cricket Ground wearing pink, News.com.au 6 January 2020

## **10 Tax Special Interest Group at AFAANZ Conference**

I am writing to inform you of a new Special Interest Group (SIG) that we are developing and expect to host at the next Accounting and Finance Association of Australia and New Zealand (AFAANZ) conference, the **Tax SIG**. The Tax SIG is tasked with developing a supportive and productive environment for tax academics in Australia and New Zealand who are engaged in, or wish to engage in tax research and/or teaching. The Tax SIG will aim to encourage research and education in tax and foster relationships with industry to improve and contemporise academic contributions. This will be achieved through keynote presentations from leading tax academics and practitioners, panel sessions, research presentations and networking opportunities. Members may include those with interests in all areas of taxation including:

- tax policy;
- tax compliance and morale;
- taxation of individuals;
- taxation of structures;
- international tax;
- capital gains tax;
- taxation of superannuation; and
- indirect taxes.

As we are planning to host the inaugural Tax SIG at the AFAANZ Conference in Melbourne in 2020, I would appreciate your kind cooperation and help in recruiting twenty interested participants (who are also members of AFAANZ) to establish a quorum. To register your interest, or to obtain any additional information, please contact the SIG organiser at: [bronwyn.mccredie@qut.edu.au](mailto:bronwyn.mccredie@qut.edu.au).

I look forward to working with you to establish this valuable group and resource.

Thank you and kind regards,



Bronwyn McCredie

## **11 New Zealand developments**

In this edition of ATTA News, we look at the 2019 legislative developments and case that the Inland Revenue Department considered particularly noteworthy.

### **Short-process rulings**

Taxpayers can now apply for a short-process ruling. This is a quicker and less expensive way to get a binding ruling than a private ruling. See [ird.govt.nz/SPR](http://ird.govt.nz/SPR)

### **Ring-fencing rental losses**

New rules came into effect from the start of the 2019-2020 income year. Taxpayers will no longer be able to reduce their tax liability by offsetting residential rental property deductions against their other income. See [ird.govt.nz/ring-fencing](http://ird.govt.nz/ring-fencing)

### **Research and Development Tax Incentive**

The Research and Development Tax Incentive is available for the 2019-2020 income year and features a 15% tax credit on up to \$120 million of eligible expenditure. See [ird.govt.nz/rd-tax-incentive](http://ird.govt.nz/rd-tax-incentive)

### **KiwiSaver changes**

KiwiSaver members can now contribute at the new rates of 6% or 10%. See [ird.govt.nz/kiwisaver-individuals](http://ird.govt.nz/kiwisaver-individuals)

### **Significant cases in 2019**

[2019] NZTRA 5

The Taxation Review Authority followed the principles established by the Supreme Court in *Ben Nevis Forestry Ventures Ltd v CIR*, notably on the fiction or the ‘artifice or contrivance’ involved in using related trusts to create interest deductions. The decision also reaffirms the onus borne by the taxpayer in tax challenges to present to the forum documentary evidence proving assessments are wrong and by how much.

*Hong v CIR* [2019] NZCA 336

Hong was a barrister sole who set a fund he called his ‘Benevolence on the Conscience Loan Fund’ to lend money to clients experiencing financial difficulties. Two loans went unpaid and Hong treated them as bad debts and claimed deductions. He argued he was in the business of dealing in or holding financial arrangements and that he had physically written off the debts as bad. The Commissioner disputed these claims.

In its first decision on the application of section DB 31 of the *Income Tax Act 2007* (NZ), which relates to bad debts, the Court of Appeal found in favour of the Commissioner. The court approved the approach taken by lower courts in earlier cases, notably the business test established in *Grieve v Commissioner of Inland Revenue* [1984] 1 NZLR 101. It is also the first time the Court of Appeal has considered the application of s 141A of the *Tax Administration Act 1994* (NZ) which relates to failing to take reasonable care.

*Mercury NZ Ltd v CIR* [2019] NZHC 1524

Mercury challenged the Commissioner's decision that the turbine halls at two of its geothermal power stations were buildings and therefore subject to a depreciation rate of 0%. Mercury argued that the turbine halls should be treated as part of the gantry cranes within the turbine halls, and therefore depreciable at a rate of 9.6%.

In its first decision on the meaning of 'building' for depreciation purposes, since new rules were introduced in 1993, the High Court found in favour of the Commissioner.

*CIR v Commercial Management Ltd* [2019] NZCA 479

Section 329 of the *Companies Act 1993* (NZ) empowers the High Court to order a removed company be restored to the New Zealand register for any reason that is just and equitable. Unlike the previous legislation that included a 20 year cut off period, the current Act has no specified limitation period.

The High Court permitted Commercial Management Ltd ('CML') to restore five group companies to the register – one as late as 25 years after removal. CML's sole purpose in seeking restoration was to gain GST advantages. The Court of Appeal agreed with the Commissioner's objection that it was not just and equitable for the companies to be restored with the sole purpose of pursuing a GST claim through a contrived corporate arrangement.

*The Church of Jesus Christ of Latter-Day Saints Trust Board and Coward v CIR* [2019] NZHC 52

Young members of the church commonly apply to conduct missionary work overseas. Churches members in the relevant foreign countries sponsor the New Zealand missionaries, and New Zealand church members sponsor foreign missionaries conducting work in New Zealand. For example, if Anna from New Zealand wishes to do missionary work in Samoa, she or more likely her relatives will 'donate' money to fund Sione from Samoa to work in New Zealand. These payments are typically claimed as tax credits for charitable or other public benefit gifts under section LD 1 of the *Income Tax Act 2007* (NZ).

The Commissioner rejected claims for a credit, arguing that the payments were not gratuitous – they represented a quid quo pro for young New Zealand missionaries being funded in their overseas work.

The High Court agreed that potential missionaries, their parents, guardians and grandparents gained a direct benefit from funding foreign missionaries and so their payments were not gifts. However, benefits accruing to other relatives, friends and other church members were sufficiently indirect so as to be considered gifts.

Jonathan Barrett

## **12 Recent Australian tax cases**

The following cases are from the last month or more of Australian cases on tax and related matters, with the catchwords taken from the ATO <<http://www.ato.gov.au>>, AustLII <<http://www.austlii.edu.au>>, Federal Court <<http://www.fedcourt.gov.au>>, Victorian Bar Tax

Bar Association <<https://www.vicbar.com.au/public/bar-associations/tax/association-news>>, NSW CaseLaw <<http://www.caselaw.nsw.gov.au>> websites and BarNet Jade alerts.

### **Federal Court of Australia**

*Deputy Commissioner of Taxation v Cutili Invest 88 Pty Ltd* [2020] FCA 47, Stewart J, 4 February 2020:

Taxation - application for summary judgment against respondents on tax debts - application allowed

Practice and procedure - freezing orders made "until further order" - whether freezing orders will continue once judgment on the claimed debts has been made - the freezing orders do not expire upon summary judgment - freezing orders expressly continued for the avoidance of doubt

The court orders that:

1 Pursuant to section 31A of the Federal Court of Australia Act 1976 and rule 26.01 of the Federal Court Rules 2011, there be summary judgment for the applicant against the respondent in the sum of \$1,079,578.78.

2 The respondent pay the applicant's costs of this proceeding as agreed or taxed.

3 Upon the applicant continuing the undertakings given in Schedule A to the Penal Notice comprising Annexure A to the Orders made on 16 August 2019, the Orders in the Penal Notice addressed to the respondent at Annexure A to these Orders have effect.

4 The proceeding be listed for case management on 7 May 2020 at 9.30AM.

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0047>

### **Administrative Appeals Tribunal**

*ACN 154 520 199 Pty Ltd (in liq) v Federal Commissioner of Taxation* [2019] AATA 5981, Deputy President Bernard J McCabe and Ms G Lazanas, Senior Member, 20 December 2019  
Taxation – GST – input tax credits – gold industry – creditable acquisition – whether applicant made first supply of that precious metal after its refining – meaning of precious metal – meaning of refining – whether ordinary or trade meaning – interpretation of word in statutory context – general anti-avoidance provisions – whether taxpayer engaged in scheme – whether taxpayer obtained a GST benefit – whether an entity that entered into or carried out the scheme or part of the scheme did so with the sole or dominant purpose of the taxpayer getting a GST benefit from the scheme – whether the principal effect of the scheme or of part of the scheme is that the taxpayer gets the GST benefit from the scheme – round robin arrangement – objection decision regarding assessments of net amount of GST affirmed  
Taxation – Administration – administrative penalty – recklessness – failure to take reasonable care – objection decision regarding rates of penalty and decision not to remit penalty affirmed  
Conclusion

294. The Commissioner's decisions in respect of the objection to the assessments of net amount of GST are affirmed. The Commissioner's decision in respect of the objection to the assessment and liability to pay administrative penalty are also affirmed.

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2019/5981.html>

### **New South Wales**

*Nadinic v Cheryl Drinkwater as trustee for the Cheryl Drinkwater Trust* [2020] NSWCA 2, Meagher JA (at [1]), Leeming JA (at [2]), Barrett AJA (at [3]), 07 February 2020  
Consumer law – misleading or deceptive conduct – where parties engaged in joint venture – where subsequently parties entered deed of settlement to resolve disputes – where one party misunderstood financial position of an entity being acquired under deed – where that party did not make inquiries to verify position – where other party participated in causing the misunderstanding, was aware of it and failed to correct it – whether conduct misleading or deceptive

Taxes and duties – GST – input tax credits – entitlement to refunds

The headnote contained the following:

Held, the Court dismissing the appeal:

As to issue (i), per Barrett AJA (Meagher and Leeming JJA agreeing):

(1) The relevant documents did not disclose or provide a means of deducing that input tax credits had already been claimed, refunded and paid away: at [36] (Barrett AJA), [1] (Meagher JA), [2] (Leeming JA).

As to issue (iii), per Barrett AJA (Meagher and Leeming JJA agreeing):

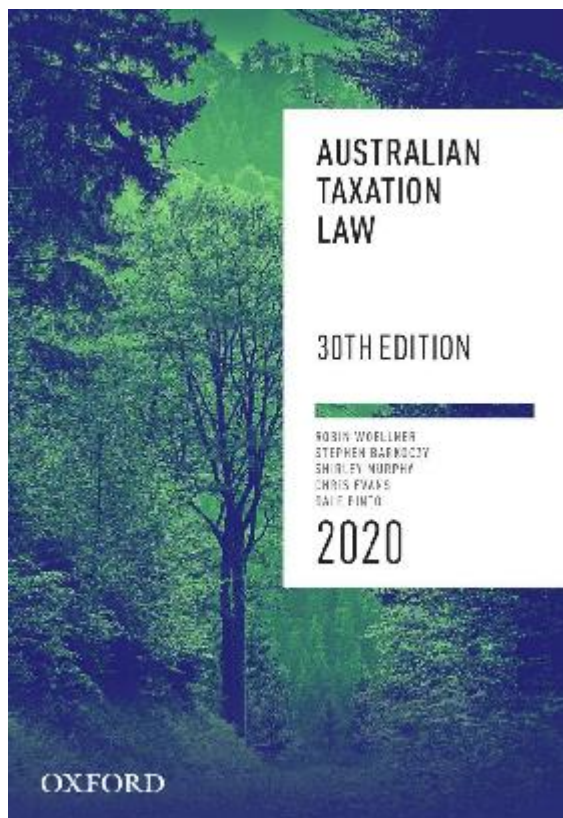
(3) GST input tax credits would not be available to offset a GST liability arising on sale of the apartments because the relevant entity was not the vendor of the apartments, however that entity would have been able to use the credits to generate cash refunds, producing equivalent financial results: at [50]-[52] (Barrett AJA), [1] (Meagher JA), [2] (Leeming JA).

<https://jade.io/article/708008>

Colin Fong

### 13 Woellner et al *Australian taxation law*, 30<sup>th</sup> edition

The 30th edition of *Australian Taxation Law* was published in January 2020 by Oxford University Press. The book is written by Robin Woellner, Stephen Barkoczy, Shirley Murphy, Chris Evans and Dale Pinto. This special milestone was celebrated with ‘birthday cake’ during the ATTA conference in Hobart.



Front cover of the 30<sup>th</sup> edition



Lisa Marriott, Saré Pienaar & Chris Evans

Photos courtesy of Emily Wu, OUP

## **14 Call for papers and submissions**

**Australian Tax Review Special Issue:** Current Topics in International Taxation

**Guest Editor** Associate Professor Antony Ting, University of Sydney

**General Editors** Professor Kerrie Sadiq, Queensland University of Technology  
Professor Dale Pinto, Curtin University

Australian Tax Review is a highly regarded refereed taxation journal published since 1971. It has maintained its “A” ranking in the 2019 Australian Business Deans Council journal quality list. It is seeking the submission of high-quality articles for a special issue of the journal to be published at the end of 2020. All submissions will be subject to the journal’s usual rigorous double-blind refereeing process.

### **Themes**

The international tax regime has experienced significant challenges and changes in recent years. The OECD BEPS project rode on the unprecedented political will aiming to strengthen international tax rules to tackle international tax avoidance by multinational enterprises. While the Final Reports of the 15 Action items were published in 2015, the OECD continues to work through the Inclusive Framework on several important topics, including the taxation of the digital economy, and special issues of transfer pricing.

Countries have responded to the BEPS reports in different ways. Australia has embraced some recommendations enthusiastically, but is reluctant to adopt others.

The domestic law on international taxation has been equally exciting. Major recent tax cases in this area cover many important issues, including the increasingly important transfer pricing rules and the interaction between domestic tax law and tax treaties.

This special issue covers some of these interesting matters, providing a snapshot of the international tax regime with respect to Australia at this exciting time in the tax world.

### **Call for papers**

This special issue calls for submission of papers that engage with current topics in international taxation. Possible themes include, but are not limited to, the following issues:

BEPS project: implications for Australia  
Transfer pricing issues, including the profit split method  
Taxation of the digital economy, including potential reform of the allocation of taxing rights among residence and source countries, and possible policies to address BEPS risks exacerbated by the rise of digital businesses  
International taxation issues under domestic law, including anti-BEPS measures (e.g. Multinational Anti-Avoidance Law, Diverted Profits Tax and Anti-Hybrid Rules), recent court cases on transfer pricing and the interaction between domestic law and tax treaties.

### **Guidelines for Authors**

All submissions should adhere to the format and style guidelines of the journal. A guide for authors and other relevant information for submitting papers are available at <https://legal.thomsonreuters.com.au/support/pdf/authorsupport/Australian-Tax-Review-Thomson-Reuters.pdf>

### **Timing**

This special issue will be published as Issue 4 in November/December 2020. Please note that manuscripts for this special issue should be submitted by 15 June, 2020. Early submissions



and communications with the guest editor (Antony Ting: [antony.ting@sydney.edu.au](mailto:antony.ting@sydney.edu.au)) are encouraged if you wish to explore the possibilities of submitting a paper. We would also appreciate your bringing this call to the attention of your colleagues and those in other disciplines who might wish to contribute.

Antony Ting, Kerrie Sadiq, and Dale Pinto  
February 2020

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**Austaxpolicy.com Blog, TTPI Working Papers and Policy Briefs**  
Both hosted and edited by the **Tax and Transfer Policy Institute**.

Please follow us on Twitter @Austaxpolicy or sign up to our fortnightly email newsletter. Contributions encouraged and sought as Austaxpolicy Blog enters our second year of publishing short, accessible but not dumbed down articles based on your substantive research, recently published or in progress. If you like what you read, please distribute it among your networks and also circulate the Blog and this call for contributions to others who may be interested.

We also seek well prepared and substantial **Working Papers** to publish in our series, from all disciplines, both on the website and on SSRN (where they will be promoted in tax, public policy lists). Please send your contribution to [tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au) for review.

Finally, we seek **Policy Briefs** for our series which provides an accessible and rigorous explanation of tax issues or concepts for policy-makers, students, academics and interested members of the public. Policy Briefs will be published as a numbered report in PDF format and also as Brief on the Austaxpolicy.com blog. Please contact us at [tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au), we look forward to hearing from you.

### **15 Electric Vehicle Owners in Queensland**

Griffith University in collaboration Queensland Government, Transport and Main Roads (TMR) and Energy Queensland (EQ) are surveying “Early Adopters of Electric Vehicles”. We want to know your experience in charging, driving and how your views on policy incentives may encourage other consumers to purchase an electric vehicle in Australia. With your help, we hope to gain insight into these areas. Thank you for your support and contribution (Griffith University Ethical Clearance Ref No: 2019/1031). Click this link below to contribute your valuable thoughts and information to our research:

<https://prodsurvey.rcs.griffith.edu.au/prodls200/index.php/778768?lang=en>

### **16 Vacancies**

#### **Senior Researchers - Economics/Tax (Department of Parliamentary Services)**

Closing date 27 Feb 2020

Job Location Canberra, ACT

Job Description

**The Department of Parliamentary Services (DPS)** is recruiting for Senior Researchers - Economics/Tax vacancies within the Economics section, Research branch. Parliamentary researchers support the work of the Parliament by providing high quality and impartial information, analysis and advice to our clients; Members, Senators, their staff, and parliamentary committees. Research positions in the Parliamentary Library are highly valued

because of the opportunity they provide to work directly with our clients to inform their representational and parliamentary work.

The work of Senior Researchers is diverse, interesting and challenging. Senior Researchers respond directly to often complex research requests from parliamentarians and parliamentary committees, sometimes within tight deadlines and under limited supervision. A significant part of the work involves writing commentaries on bills (Bills Digests). Researchers may also write publication on matters of interest to Parliament and help prepare range of self-help resources.

The Economics section provides assistance to clients in a wide range of policy areas including taxation, Commonwealth-State financial relations, transport, competition policy, communications, infrastructure, trade, agriculture, resources, regional development and labour markets. Senior researchers typically assume responsibility for particular policy areas but must be willing to take on work in other areas in response to Parliamentary needs, workload or staffing limitations.

We are looking for a person with relevant tertiary qualifications, knowledge and experience. For one of the positions, expertise in taxation practice and law will be highly regarded, but is not essential.

The successful applicants will have strong research and analytical abilities. They will be able to work directly to clients under limited supervision. They will be able to work in a team and be well informed, motivated, adaptable and able to provide excellent client service. They will be professional, display sound judgement and be sensitive to working in the parliamentary environment. They will be able to write in plain English. They will be able to explain complex matters accurately to experts and non-experts in an appropriate manner, whether in writing, on the phone or in person. They will be able to produce accurate briefs by agreed deadlines. Expertise in Excel and quantitative analysis will be highly valued. Awareness of the political and Parliamentary processes and the workings of government is desirable.

Please note: This recruitment process is being used to fill both ongoing and non-ongoing positions. Non-ongoing position will be offered on up to a 12 month basis, with the possibility of extension.

For more information about the role, eligibility requirements and to submit an application visit DPS Careers:

<https://career10.successfactors.com/sfcareer/jobreqcareer?jobId=25934&company=DPS&username>

Closing date: 27th February, 2020

## **17 Tax and related meetings**

**UNSW School of Taxation and Business Law** will be hosting the 14th International Conference on Tax Administration, a prestigious biennial event that brings together leading tax administrators, academics and practitioners from around the globe. The theme of the 2020 conference is: 'New Frontiers in Tax Administration'

During this two-day event, conference speakers will present on:

cutting-edge initiatives in service delivery and compliance including digital and data use, tap and go, and artificial intelligence;

data policy, ethical data exploitation, cyber security and new developments in regulating data platforms;

globalisation of revenue administration;

tax dispute resolution and new approaches to protecting the vulnerable including the elderly, impaired and those in remote areas; and

administrative policy options to assist capacity building in the Asia Pacific region in responding to new business models developing in the digitized economy.

Join us to hear from leading academics, policy makers and practitioners about current and future global trends, including:

David Bradbury, Head of the Tax Policy and Statistics Division in the OECD's Centre for Tax Policy and Administration;

Nina Olson Centre for Taxpayer Rights;

Senior Australian and international tax officials, and Academics from UNSW Business School.

Event details:

**When:** 9-5pm, 7& 8 April 2020

**Where:** Conference: Hilton Sydney, 488 George Street, Sydney, 2000 & Dinner (7 April): The Tea Room, QVB, 455 George Street, Sydney, 2000

**Cost:** \$935 for early conference registrations

**Contact:** Maree Magafas, UNSW Business School, School of Taxation and Business Law

**Register here:** <https://www.business.unsw.edu.au/news-events/events/14th-international-conference-on-tax-administration>

Conference organisers have secured with the Hilton a special delegate rate of 10% off the advertised day rate. To book, please visit here or call on +61 (0)2 9266 2000 referring to group code GDYNU for a discounted rate (10% off from hotel best available rate)

The **2021 ATTA conference** will be hosted by the University of Canterbury from 20 to 22 January 2021 and will be held at Rydges Latimer in the Christchurch CBD. The theme is:

*The Future of Tax: More than Just Politics?*

For more information, please contact:

Alistair Hodson [alistair.hodson@canterbury.ac.nz](mailto:alistair.hodson@canterbury.ac.nz)

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Shelley Griffiths [shelley.griffiths@otago.ac.nz](mailto:shelley.griffiths@otago.ac.nz)

The **Tax Institute's** website [www.taxinstitute.com.au](http://www.taxinstitute.com.au) lists many conferences, conventions, seminars, and breakfast clubs. For further enquiries, contact Phillipa Cardigan (02) 8223 0045 or email [phillipacardigan@taxinstitute.com.au](mailto:phillipacardigan@taxinstitute.com.au) or register online at [www.taxinstitute.com.au](http://www.taxinstitute.com.au)

Call the National Events team on 1300 733 842 for more details.

Please contact the National Events Team on 1300 829 338 or by email, [nationalevents@taxinstitute.com.au](mailto:nationalevents@taxinstitute.com.au) Follow us on Twitter @TaxInstituteOz

## Overseas

**American Accounting Association** Calls for paper website <http://aaahq.org/calls/default.cfm>

**Canadian Tax Foundation** <http://www.ctf.ca/ctfweb/en>

**Institute for Fiscal Studies Conferences and seminars**

<http://www1.ifs.org.uk/conferences/index.shtml>

**Institute for Austrian and International Tax Law** 2020 events: The topics of the seminar sessions and other events can always be found at [www.wu.ac.at/taxlaw](http://www.wu.ac.at/taxlaw). Please see the website for most up-to-date information on them.

March 2020

March 16, 2020 KSW-Information Evening, Prof. Rust (in German)

March 16-17, 2020 Conference: "Tax Transparency and Corruption"

March 23, 2020 IFA-Event: "Impacts of the US-Tax Reform on European Enterprises"

March 30, 2020 KPMG-WU-Workshop (in German)  
April 2020  
April 17-18, 2020 Wiener Bilanzrechtstage: "Kauf und Verkauf von Unternehmen" (in German)  
April 20, 2020 Colloquium: "Current Developments in European and International Tax Law", Stefano Ceccacci, Alessandro Bucchieri  
April 22, 2020 Wolfgang Gassner Memorial Lecture: "Österreich auf dem Weg zur Einheitsbilanz - ein Vorbild für Europa?", Heribert Anzinger (in German)  
May 2020  
May 04-08, 2020 Advanced Transfer Pricing Course (General Topics)  
May 07, 2020 VAT-Symposium: "Abgrenzung Drittstaat zu Europäischer Union aus umsatzsteuerlicher Perspektive: Systembruch oder Notwendigkeit? " (in German)  
May 11, 2020 Panel Discussion of Lawyers (in German)  
May 14-16, 2020 Conference: "Tax Treaty Case Law Around the Globe" (Tilburg)  
May 18, 2020 Colloquium: "Current Developments in European and International Tax Law", Peter Hongler, Graeme Alan Wood, Jozef Kavuliak  
May 25, 2020 KPMG-WU Workshop (in German)  
June 2020  
June 08, 2020 Colloquium: "Current Developments in European and International Tax Law", Jens Wittendorff, Katharina Schlücke  
June 15, 2020 27. Vienna Symposium on International Tax Law: "'Tax Covered' – The Scope of Double Taxation Conventions"  
June 18-20, 2020 EATLP Congress  
June 18-20, 2020 Seminar: "Double Tax Treaties in Case Studies – Senior Level"  
June 25, 2020 Semester closing (in German)  
July 2020  
July 02-04, 2020 Rust Conference: "Mission Completed? The Implementation and the Lasting Effects of the Multilateral Instrument (MLI)"  
July 06-10, 2020 Advanced Transfer Pricing Course (Benchmarking)  
July 13-17, 2020 CEE Vienna International Tax Law Summer School 2020  
September 2020  
September 11, 2020 Klaus Vogel Lecture: "Crossroads of Bilateral Investment Treaties and Taxation"  
September 21, 2020 KSW-Information Evening, Claus Staringer (in German)  
September 21-22, 2020 Workshop: "Tax Transparency and Corruption"  
September 21-25, 2020 Advanced Transfer Pricing Course (Specific Topics)  
September 30, 2020 IFA-Event: "Das Internationale Steuerrecht im Umbruch – vom Steuermodell einer digitalen Wirtschaft zu einem neuen, globalen Besteuerungskonzept" (in German)  
October 2020  
October 19, 2020 KSW-Information Evening, Josef Schuch (in German)  
October 30, 2020 WU Transfer Pricing Symposium  
November 2020  
November 02-03, 2020 Conference: "DET and VAT"  
November 05, 2020 SWI-Annual Retreat (in German)  
November 06-07, 2020 Symposium on Procedural and Constitutional Law (in German)  
November 09, 2020 KPMG-WU-Workshop (in German)  
November 16, 2020 Colloquium: "Current Developments in European and International Tax Law"  
November 18, 2020 IFA Event – WIN Veranstaltung: "Missbrauch und Steuerumgehung" (in German)  
November 19-21, 2020 Conference: "Recent and Pending Cases at the Court of Justice of the European Union on Direct Taxation"  
December 2020

December 03, 2020 Panel Discussion of Tax Advisor (in German)  
December 14, 2020 KPMG-WU-Workshop (in German)

**International Bureau of Fiscal Documentation.** Various courses in Amsterdam, the Netherlands or in Malaysia or elsewhere. For details, see <http://www.ibfd.org> The IBFD International Tax Academy (ITA) runs an extensive international course program. Generally all courses are held in Amsterdam. Should you require any further information or wish to register please refer to their web site [www.ibfd.org](http://www.ibfd.org) or contact the International Tax Academy at +31-20-554 0160 or by e-mail [ita@ibfd.org](mailto:ita@ibfd.org)

For courses go to <http://www.ibfd.org/Training>

IBFD International Tax Courses - See also <http://www.ibfd.org/Training/Find-course>  
Transfer Pricing in a Post- BEPS World - Chinese Perspective 26-27 March 2020, Beijing

Current Issues in International Tax Planning 4-6 March 2020, Amsterdam

Principles of Transfer Pricing 9-13 March 2020, Amsterdam

Principles of International Taxation 16-20 March 2020, Amsterdam

International Tax, Legal and Commercial Aspects of Mergers & Acquisitions 11-13 May 2020, Amsterdam

6th Africa Tax Symposium 20-22 May 2020, Arusha, Tanzania.

IBFD Masterclass 18-19 May 2020 as a prelude to the 6th IBFD Africa Tax Symposium,

Tax Accounting, Reporting and Control 25-27 May 2020, Amsterdam

Transfer Pricing and Intra-Group Financing 28-29 May 2020, Amsterdam

US Corporate Taxation 22-24 June 2020, Amsterdam

**International Fiscal Association Congresses** <http://www.ifa.nl/pages/default.aspx>

IFA 2020 Congress, **Cancun**, Mexico, 4-8 October 2020 <https://www.ifacancun2020.com>

**International Tax Planning Association Forthcoming meetings**

<http://www.itpa.org/meetings.html>

**2020 SMU David R Tillinghast Global Taxation Conference**

We would like to extend our apologies and gratitude for sending your papers to us. However, owing to the Singapore national alert for the Coronavirus being raised to orange (<https://www.gov.sg/features/2019-ncov>) and on fresh guidance from the Singapore Management University school administration, we will be postponing the conference that was originally scheduled for 30 March to 1 April 2020. We are currently liaising with all relevant parties to find a suitable date later in the year to hold the event.

SMU is grateful for your support of the conference and seek your kind patience and understanding. We apologize for any inconvenience caused and will be in touch with the new dates as soon as possible

**Impact of Taxation on the Digital Economy Symposium**

We would like to extend our apologies and gratitude for sending your papers to us. However, owing to the Singapore national alert for the Coronavirus being raised to orange (<https://www.gov.sg/features/2019-ncov>) and on fresh guidance from the Singapore Management University school administration, we will be postponing the conference that was originally scheduled for 3 April 2020. We are currently liaising with all relevant parties to find a suitable date later in the year to hold the event.

SMU and the University of Canterbury are grateful for your support of the conference and seek your kind patience and understanding. We apologize for any inconvenience caused and will be in touch with the new dates as soon as possible.

Other useful tax and law related conference websites include the

International Bar Association: [http://www.ibanet.org/Conferences/conferences\\_home.aspx](http://www.ibanet.org/Conferences/conferences_home.aspx)  
IBFD Course calendar  
<http://www.ibfd.org/portal/app?bookmarkablePage=org.ibfd.portal.presentation.TaxCourses>  
International Events and Law Conferences  
<http://internationaleventsandlawconferences.yolasite.com>  
Conferences in Australia <http://www.conferencealerts.com/country-listing.php?page=1&ipp=All&country=Australia>  
New South Wales Bar Association  
[http://www.nswbar.asn.au/docs/professional/prof\\_dev/CPD/programme/index.php](http://www.nswbar.asn.au/docs/professional/prof_dev/CPD/programme/index.php)  
Law Council of Australia <http://www.lawcouncil.asn.au/lawcouncil/index.php/conferences>  
Practising Law Institute <http://www.pli.edu/>  
New York County Lawyers Association <http://www.nycla.org>  
American Bar Association Taxation CLE topics  
[http://www.americanbar.org/cle/cle\\_courses\\_by\\_topic/taxation.html](http://www.americanbar.org/cle/cle_courses_by_topic/taxation.html)  
New York Bar Association <http://www.nysba.org/>  
Hieros Gamos Worldwide Law Events Calendar <http://www.hg.org/legal-events.asp>  
For Australian ones <http://www.hg.org/legal-events-australia.asp>  
For social sciences and humanities conferences, meetings etc, see Mind: The Meetings Index  
<http://www.interdok.com/mind>  
See also the magazine *Australian Conference & Exhibition Diary*, Vamosi Information Publication.

## 18 Recent publications

**Bold** indicates ATTA members. Readers are encouraged to notify the Editor of recently written publications for notification, in these pages. Please note some of the overseas publications listed may not yet be available locally.

### Local

*Austaxpolicy*: The Tax and Transfer Policy Blog <<http://www.austaxpolicy.com>> Recent postings include:

Vaughan, Michael 'What Drove Recent Civil Society Campaigning Around International Tax Justice in the UK and Australia?' 3 February 2020

**Barrett, Jonathan** 'Towards Optimal Tax-Benefits Treatment of Collectors of Artworks', 06 February 2020

(2019) 5 (7 & 8) *Australian Tax Law Bulletin*

General Editor's introduction - **Helen Hodgson**

No deduction for "non-compliant payments" - Paul Banister

Match fixing: Australia's hybrid mismatch rules - Sylvester Urban

The administration of the tax system - what do you expect? The Inspector-General of Taxation and Taxation Ombudsman wants to know - Karen Payne

A working holiday, or an odyssey in Australian tax test case litigation? *Addy v Commissioner of Taxation* - John W Fickling

Davies, Jennifer *Tax stability*, presented at the Melbourne Law School 14th Annual Tax Lecture, by Justice Davies, 29 October 2019 <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-davies/davies-j-20191029>

Davis, Kevin 'Here's a radical reform that could keep super and pay every retiree the full pension' *The Conversation* 7 February 2020 <https://theconversation.com/heres-a-radical-reform-that-could-keep-super-and-pay-every-retiree-the-full-pension-131289>

**Kraal, Diane;** Mulder, Machiel and Perey, Peter (2020) 'Taxation and pricing of natural gas: the Dutch transition to gas market hub pricing and lessons for Australia's integrated gas projects' (2020) 43(1) *University of New South Wales Law Journal* 1-43.

<http://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2020/02/Kraal-et-al-Taxation-and-Pricing-of-Natural-Gas.pdf>

**Kraal, Diane** and Coleman, Andrew 'Teaching legal studies in business degrees: A review of a method and its practice' (2019) 44 (11) *Australian Journal of Teacher Education* 18-41.

<https://ro.ecu.edu.au/ajte/vol44/iss11/2/>

MacDonald, Kirsten & Guest, Ross 'Kiwisaver: a jewel in the crown of New Zealand's retirement income framework?' in: Luetjens, Joannah; Mintrom, Michael & 't Hart, Paul (ed) *Successful public policy: lessons from Australia and New Zealand*, Acton, ACT, ANU Press, 2019, Ch 20, pp 477-504

Martin, Peter 'Cabinet papers 1998-99: how the GST became unstoppable' *The Conversation* 1 January 2020 < <https://theconversation.com/cabinet-papers-1998-99-how-the-gst-became-unstoppable-128844>>

**McLaren John;** Kendall, W & Rook L, 'Would the Singaporean approach to whistleblower protection laws work in Australia?' (2019) 13 (1) *Australasian Accounting, Business and Finance Journal* 90 -108

**Mortimer, Colleen; Pinto, Dale & Morgan, Annette** *Practical introduction to Australian taxation law 2020*, 2<sup>nd</sup> ed, Sydney, Thomson Reuters, 2019

Pyke, John *Government powers under a federal constitution: constitutional law in Australia*, 2<sup>nd</sup> ed, Sydney, Lawbook Co, 2020, Ch 28 'The Commonwealth's financial powers: tax, grants to the states, and spending money, pp 481-507

**Prebble, John** & Pearson, Grant *Fundamentals of income taxation*, Wellington, Thomson Reuters New Zealand, 2018

Scott, Ayesha & Gilbert, Aaron 'How New Zealanders miss out on hundreds of thousands in retirement savings' *The Conversation* 12 December 2019 <https://theconversation.com/how-new-zealanders-miss-out-on-hundreds-of-thousands-in-retirement-savings-127708>

**Stewart, Miranda; Cooper, Graeme; Vann, Richard & Dirkis, Michael** *Income taxation: commentary & materials*, 9th ed, Sydney, Thomson Reuters, 2020

*Taxation Today* Volume 135, January/February 2020

Tax Policy: What to Expect in the Twenties - Robyn Walker and Emma Faulknor

Capital Gains and Compliance Costs: Are Capital Gains Too Expensive (For New Zealand)? [Part 2] - David Sutton and Maithm Khaghaany

**Tran-Nam, Binh** 'The Goods and Services Tax (GST): the public value of a contested reform', in: Luetjens, Joannah; Mintrom, Michael & 't Hart, Paul (ed) *Successful public policy: lessons from Australia and New Zealand*, Acton, ACT, ANU Press, 2019, Ch 10, pp 235-255

**Woellner, Robin;** Barkoczy, Stephen; Murphy, Shirley; **Evans, Chris & Pinto, Dale** *Australian taxation law*, 30<sup>th</sup> ed, Melbourne, Oxford University Press, 2020

**Overseas**

**Anesa, Mattia**; Gillespie, Nicole A; Spee, Paul and **Sadiq, Kerrie** 'The legitimization of corporate tax minimization' (May 2019) *75 Accounting, Organizations and Society* 17-39

Bora Laskin Law Library Research guides *Tax law*, 11 July 2019

<https://guides.library.utoronto.ca/taxlaw>

(2019) 67 (4) *Canadian Tax Journal*

Peer Reviewed Articles

Contracting for Tax Room: The Law and Political Economy of Tax-Point Transfers - Rory Gillis

Did the Adoption of IFRS Affect Corporate Tax Avoidance? Oliver Nnamdi Okafor, Akinloye Akindayomi, and Hussein Warsame

Policy Forum

Editor's Introduction—Provincial Finances - Kevin Milligan

Newfoundland and Labrador's Debt Strategy—Waiting for a Saviour or Godot? Wade Locke and Douglas May

Is New Brunswick Heading over the Fiscal Cliff? Richard Saillant and Herb Emery

Dette du Québec — Dompter la bête - Luc Godbout; Quebec's Debt—Taming the Beast- Luc Godbout

Symposium

The Relationship Between Restrictions on the Deduction of Interest Under Canadian Law and Canadian Tax Treaties - Brian J. Arnold

The Transfer-Pricing Profit-Split Method After BEPS: Back to the Future - **Michael**

**Kobetsky**

Value Creation: A Constant Principle in a Changing World of International Taxation - Jinyan Li, Nathan Jin Bao, and Huaning (Christina) Li

The Digital Services Tax on the Verge of Implementation - Wei Cui

A New Global Tax Deal for the Digital Age - Allison Christians and Tarcisio Diniz

Magalhaes

Sharing Tax Information in the 21st Century: Big Data Flows and Taxpayers as Data Subjects

- Arthur J Cockfield

Features

Finances of the Nation: Taxing Wages in Canada, 2001-2018 - Ken McKenzie

Current Cases: (FCA) *Plains Midstream Canada ULC v. Canada*; (UKUT) (TCC)

*Development Securities PLC and Others v. The Commissioners for HM Revenue and*

*Customs (Tax)* - Josiah Davis, Gergely Hegedus, Alina Khakhuda, and Joel Nitikman

*International Tax Planning: The Foreign Affiliate Surplus Reclassification Rule* - Gwendolyn Watson

*Personal Tax Planning: Getting a Grip on New Passive Investment Rules and Integration* -

Dino Infanti, Deepk Jaswal, and Sonam Toor; *Planification fiscale personnelle : Pour mieux*

*saisir les nouvelles règles sur les placements passifs et l'intégration* - Dino Infanti, Deepk

Jaswal, et Sonam Toor

*Selected US Tax Developments: Guidance on Qualified Shareholders of REITs Still Lacking*

Peter A Glicklich and Heath Martin

*Current Tax Reading* - Robin Boadway and Kim Brooks

**Eccleston, Richard** and Elbra, Ainsley eds., *Business, civil society and the "new" politics of corporate tax justice: paying a fair share?* Northampton, MA, Edward Elgar, 2018, 318 pp

**Tran-Nam, Binh** 'Australia's tax reform experience: lessons for Malaysia', in: Ariff, Mohamed and Leng, Yeah Kim (ed) *Malaysia's taxation system: contemporary practices, issues and future direction*, Sunway University Press, Malaysia, 2020, Ch 9, 240-270; ISBN: 978-967-13697-9-1, RM168.00



**Tran-Nam, Binh;** Oguttu, A. and Mandy, K ‘Overview of tax complexity and tax simplification: a critical review of concepts and issues’, in: **Evans, Chris;** Franzsen R. and Stack, L (eds), *Tax simplification: an African perspective*, Pretoria, South Africa: Pretoria University Law Press, 2019, Ch 2, 8-38

van Brederode, Robert F (ed) *Ethics and taxation*, Singapore, Springer, 2020

Introduction: Why Ethics Matter in Taxation - Robert F van Brederode

Tax Policy and Design of Tax Law

The Moral Basis for Taxation - Jane Frecknall-Hughes

Social Contract and Beyond: Sociability, Reciprocity and Tax Ethics - Hans Gribnau, Carl Dijkstra

Libertarian Perspectives on the Ethics of Taxation - Walter E Block, Christian Torsell

Head, Proportional, or Progressive Taxation: An Evaluation Based on Jewish and Christian Ethics - Ronald M Green

Developing Moral Standards for Taxation - Jennifer Bird-Pollan

Global Tax Justice: Who’s Involved? Cees Peters

Ethical Standards and Obligations for Tax Advisors and Taxpayers

Taxpayers’ Subjective Concepts of Taxes, Tax Evasion, and Tax Avoidance - Christoph Kogler, Erich Kirchler

Ethical Standards for Tax Planning by Corporations - Ave-Geidi Jallai

Ethical Standards for Tax Advisers - **Michael Walpole**

Tax Law Enforcement

Taxpayer Rights and Protections in a Digital Global Environment - **Duncan Bentley**

Is There Any International Fundamental Right Against an International General Anti-avoidance Rule? João Dácio Rolim

Countermeasures to Tax Fraud, Evasion and Avoidance: A Critical Review - Robert F van Brederode

Tax Rulings, State Aid and the Rule of Law- Aleksandra Bal

Cross-Border Big Data Flows and Taxpayer Privacy - Arthur J Cockfield

The Ethical Tax Judge - Kim Brooks

## **19 Quotable quotes**

“An investigation by Background Briefing has uncovered the ease with which a small group of accountants spent years targeting drug users, homeless people and those down on their luck in order to help clients cheat the tax man and other creditors.

It is a scheme that involves nearly 200 companies across almost every state in the country, and for more than a decade, its architects have been getting away with it.

The revelations expose gaping flaws in our corporate system and raise questions about how the accountants are able to operate in plain sight of the tax office and the corporate regulator, ASIC.”

Source: Oakes, Dan & Story Carter, Jeremy for *Background Briefing* ‘The multi-million-dollar ‘dummy director’ scam using vulnerable Australians to rip off the tax office’ ABC News 14 February 2020 <https://www.abc.net.au/news/2020-02-14/vulnerable-australians-targeted-in-huge-tax-evasion-scam/11785194>

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“Explosive new emails have revealed the Morrison government was warned its so-called robo-debt scheme was illegal and the ‘debts’ were not lawful.

Confidential emails between tax office officials, provided to a Senate committee on Thursday, reveal that the Department of Social Service had legal advice that thousands of debts raised were “not lawful debts”.

But it’s not yet clear how long ago that legal advice was received.

The November 19, 2019, email, from the Australian Taxation Office’s general counsel, Jonathan Todd, to the ATO commissioner, Chris Jordan, was marked “Sensitive: Legal”.

“In further discussion with the DSS, it appears that what you need to raise is: they have advised you that they have received legal advice that debts based solely upon DSS own income averaging of ATO annual tax data are not lawful debts (‘robo-debts’),” the email stated.

“They have also suspended the raising and recovery of robo-debts as of today.”

Just a week later, on November 27, a federal court judgment revealed the government had settled a court challenge brought by Victoria Legal Aid over a robo-debt, rather than allow it to proceed to court.”

Source: Maiden, Samantha ‘Emails reveal government knew Centrelink ‘robo-debt’ scheme was illegal’ *The New Daily* 6 February 2020  
<https://thenewdaily.com.au/finance/welfare/2020/02/06/emails-robo-debt-illegal>

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“According to the Property Council of Australia’s submission: “Stamp duty distorts business decisions, locks families out of housing choices, worsens housing affordability, suppresses economic activity and leaves governments with highly volatile revenue streams.” Furthermore: “It is a tax that is a relic from our colonial past, representing a stamp of the state’s authority over property transaction that has absolutely no economic relevance in our modern Australia.”

The Thodey review is now looking at how stamp duties could be abolished and replaced by an appropriate source of replacement revenue, like an expanded land tax.

Such a switch could not only ease barriers to entry to home ownership for younger Australians, but also make downsizing an easier financial decision for older Australians.

Of course, introducing a new tax – even a modest and progressively levied one - on every home in Australia would require the sort of political skill and salesmanship we’re rather short on at the moment.

But good ideas are like air bubbles in water: it’s hard to keep them down. And abolishing stamp duty in favour of land tax is a good idea whose time has well and truly come.”

Source: Irvine, Jessica ‘Abolish stamp duty - impose a proper land tax instead’ *Sydney Morning Herald* 12 February 2020 <https://www.smh.com.au/business/the-economy/abolish-stamp-duty-impose-a-proper-land-tax-instead-20200212-p5406c.html>

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“The last GST Council meeting had given a two-year extension to the National Anti-profiteering Authority (NAA), postponed the deadline for filing annual returns by two

months, and avoided voting by deferring the contentious issue of GST rates on lotteries. All these issues tell a story of unresolved matters in the indirect tax system, now entering its third year.

Then there are issues concerning authorities of advance ruling (AARs), which have in a number of cases given contradictory rulings. This is not to say that the GST system is all problematic and no progress has been made”

Source: Dhasmana, Indivjal ‘Two years on, still not a good and simple tax: What ails the GST regime’, *Business Standard* 2 July 2019 [https://www.business-standard.com/article/opinion/two-years-on-still-not-a-good-and-simple-tax-what-ails-the-gst-regime-119063000713\\_1.html](https://www.business-standard.com/article/opinion/two-years-on-still-not-a-good-and-simple-tax-what-ails-the-gst-regime-119063000713_1.html)

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“A Labour frontbencher has shrugged off criticism over an outfit that showed part of her shoulder in the Commons as she spoke at the despatch box.”

Tracy Brabin MP 🌹 (@TracyBrabin)

“Hello. Sorry I don’t have time to reply to all of you commenting on this but I can confirm I’m not....

A slag

Hungover

A tart

About to breastfeed

A slapper

Drunk

Just been banged over a wheelie bin.

Who knew people could get so emotional over a shoulder... “  
<https://t.co/sTWWiEY2TF> February 4, 2020

Source: Rawlinson, Kevin ‘I am not a slapper’: Labour MP hits back at criticism of attire’ *The Guardian* 5 February 2020  
<https://www.theguardian.com/politics/2020/feb/04/i-am-not-a-slapper-labour-mp-tracy-brabin-defends-her-commons-attire>

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“I’m a tax accountant, Casper”

“That doesn’t sound very exciting. What an idiot you are for having that as a career”.

Source: Mad as Hell does Hard Quiz 21 January 2020  
<https://www.facebook.com/ABCTV/videos/3639152766126204/>

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## ATTA News March 2020

<https://www.business.unsw.edu.au/about/schools/taxation-business-law/australasian-tax-teachers-association/newsletters>

Editor: Colin Fong, *Teaching Fellow, UNSW Law*, UNSW Sydney [c.fong@unsw.edu.au](mailto:c.fong@unsw.edu.au)

ATTA website: <https://www.business.unsw.edu.au/about/schools/taxation-business-law/australasian-tax-teachers-association>

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### 1 Presidential column

Hello and welcome to the March newsletter,

I write to you in the second week of what has been an eventful start to the teaching year. I'm sure many of you are in similar situations where you are needing to quickly adjust to the rapidly evolving situations universities find themselves in. I'm sure I am not alone in having to upskill with technology to teach students who have been unable to return to university for classes this semester/trimester. Hence, I have just this short message to you this month.

One quick point – if you would like to raise a question about tax to the ATTA group, you can use the ATTA LinkedIn Group Page: <https://www.linkedin.com/groups/13512139/>  
The LinkedIn group was set up by Prof Brett Freudenberg for the purposes of helping the group stay connected and as a forum to engage over tax queries. If you are not already a member of the group, do a 'request to join' for access.

Please also note that due to the coronavirus pandemic, the annual Queensland Tax Researchers Symposium will not take place in 2020.

We pass our congratulations on to Donovan Castelyn from Curtin University who was recently granted the Emerging Tax Star award by The Tax Institute (in the Tax Adviser of the Year Awards for 2020 – Australia's most prestigious awards program for tax professionals). The award recognises an inspirational young tax professional who has been identified as a future leader in the profession.

All the best,  
Lisa  
Lisa Marriott  
President – ATTA

## **2 ATTA's 33rd Annual Conference**

The 33 Annual ATTA conference will be hosted by the UC Business School at the University of Canterbury from 20 to 22 January 2021 in Christchurch, New Zealand. It will be held at Rydges Latimer in the Christchurch CBD, rather than at the University of Canterbury (UC). Bookings for a limited number of discounted rooms can be made direct to Rydges Latimer at: <https://www.rydges.com/private-page/australasian-tax-teachers-association/>

The welcome reception will be held at the International Antarctic Centre near Christchurch International Airport, with the conference dinner at the Great Hall at the Arts Centre in the CBD (part of UC's campus before it moved out of the city during the 1960-70s). A farewell BBQ will be held at Rydges Latimer at the conclusion of the conference.

The theme is: **The Future of Tax: More than Just Politics?**

More details will follow over the coming months.

Adrian Sawyer

## **3 Forum for Tax Questions**

If you want to raise to the ATTA group a question about tax (such as the interpretation of a case or legislation) then why don't use the ATTA LinkedIn Group page: <https://www.linkedin.com/groups/13512139/>

If you are not already a member just do a 'request to join'.

Dr Brett Freudenberg | Professor - Tax Law  
Griffith Business School

## **4 Arrivals, departures and honours**

**Shaun Castor** is a commencing PhD candidate at the UNSW School of Taxation and Business Law. He has spent a number of years working at large accounting firms, advising clients in the areas of corporate tax and international tax with experience in both tax advisory and compliance. He completed undergraduate degrees in commerce and law at the University of Wollongong and his research interests are in the anti-base erosion and profit shifting (BEPS) project, international tax treaties, tax consolidation and the interpretation of tax treaties and statutes. Shaun's PhD research is focusing on jurisdictional responses to the OECD's BEPS project.

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Congratulations to **Donovan Castelyn**, Curtin University and Curtin Tax Clinic who won Emerging Tax Star award at the recent Tax Institute annual Tax Summit, held in Sydney, 11-13 March 2020. Open to members and non-members with less than 5 years tax experience, this award recognises inspirational young tax professionals who are already proving themselves as future leaders in the profession. On the website it mentions: "Donovan is the Co-Founder and Clinic Supervisor of the Curtin Tax Clinic, Australia's first pro-bono tax clinic and the impetus for the National Tax Clinic Program. Donovan is also an Associate Lecturer at Curtin University where he teaches into the taxation major and LLB streams with

a primary focus on international taxation and Australian tax jurisprudence. Donovan's research interests include comparative taxation, tax pedagogy and policy and design. Holding qualifications in both law and commerce, Donovan is admitted as a Lawyer of the Supreme Court of Western Australia. Having recently completed his Masters in International Taxation, Donovan now intends to further his studies through the CTA qualification and doctoral research in the field of taxation law." <https://info.taxinstitute.com.au/taxawards-1>



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### **5 ATTA people in the media**

#### **Le, Van**

Barker, Eric and Major, Tom 'Remote communities call on Federal Government for increases in tax concessions' ABC North West Qld News 7 March 2020

<https://www.abc.net.au/news/2020-03-07/remote-communities-call-for-increases-in-tax-concessions/12021830>

### **6 Tax Special Interest Group at AFAANZ Conference**

I am writing to inform you of a new Special Interest Group (SIG) that we are developing and expect to host at the next Accounting and Finance Association of Australia and New Zealand (AFAANZ) conference, the **Tax SIG**. The Tax SIG is tasked with developing a supportive and productive environment for tax academics in Australia and New Zealand who are engaged in,

or wish to engage in tax research and/or teaching. The Tax SIG will aim to encourage research and education in tax and foster relationships with industry to improve and contemporise academic contributions. This will be achieved through keynote presentations from leading tax academics and practitioners, panel sessions, research presentations and networking opportunities. Members may include those with interests in all areas of taxation including:

- tax policy;
- tax compliance and morale;
- taxation of individuals;
- taxation of structures;
- international tax;
- capital gains tax;
- taxation of superannuation; and
- indirect taxes.

As we are planning to host the inaugural Tax SIG at the AFAANZ Conference in Melbourne in 2020, I would appreciate your kind cooperation and help in recruiting twenty interested participants (who are also members of AFAANZ) to establish a quorum. To register your interest, or to obtain any additional information, please contact the SIG organiser at: [bronwyn.mccredie@qut.edu.au](mailto:bronwyn.mccredie@qut.edu.au).

I look forward to working with you to establish this valuable group and resource.

Thank you and kind regards,



Bronwyn McCredie

## **7 Recent Australian tax cases**

The following cases are from the last month or more of Australian cases on tax and related matters, with the catchwords taken from the ATO <<http://www.ato.gov.au>>, AustLII <<http://www.austlii.edu.au>>, Federal Court <<http://www.fedcourt.gov.au>>, Victorian Bar Tax Bar Association <<https://www.vicbar.com.au/public/bar-associations/tax/association-news>>, NSW CaseLaw <<http://www.caselaw.nsw.gov.au>> websites and BarNet Jade alerts.

### **High Court of Australia**

*BHP Billiton Limited v Commissioner Of Taxation* [2020] HCA 5, Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ, 11 March 2020

Income tax (Cth) – Assessable income – Controlled foreign companies – Where Pt X of Income Tax Assessment Act 1936 (Cth) ("Act") attributes income of controlled foreign company ("CFC") to Australian resident taxpayer who has sufficiently substantial interest in it – Where BHP Billiton Marketing AG ("BMAG") CFC of BHP Billiton Ltd ("Ltd") – Where income of BMAG derived from sale of commodities purchased by BMAG from BHP Billiton

Plc's ("Plc") Australian entities – Where that income included in assessable income of Ltd if Plc's Australian entities "associates" of BMAG – Where company "associate" of entity under s 318(2) of Act if "sufficiently influenced" by entity – Where s 318(6)(b) provides that company "sufficiently influenced" by entity if accustomed or under obligation or might reasonably be expected to act in accordance with directions, instructions or wishes of entity – Where Ltd and Plc part of dual listed company arrangement and operated as if "single unified economic entity" – Whether Plc's Australian entities "associates" of BMAG – Whether Ltd "sufficiently influenced" by Plc – Whether Plc "sufficiently influenced" by Ltd – Whether BMAG "sufficiently influenced" by Plc and Ltd.

Words and phrases – "assessable income", "associate", "attribute", "combined businesses", "controlled foreign company", "dual-listed", "effective control", "in accordance with the directions, instructions or wishes", "single unified economic entity", "sufficiently influenced", "tainted sales income".

Appeal dismissed with costs.

On appeal from the Federal Court of Australia

<https://jade.io/article/719488>

### **Federal Court of Australia**

*Commissioner of Taxation v Travelex Limited* [2020] FCAFC 10, Kenny, Derrington & Steward JJ, 14 February 2020

Taxation – interest on overpayments – GST – where supplies which were GST-free erroneously included in Business Activity Statement – where taxpayer sent correspondence to Commissioner notifying that net amount in period ought to have been less than zero – where Commissioner purported to amend BAS to refund overpaid GST – where Commissioner refunded overpaid amounts – where taxpayer asserts Commissioner is required to pay interest from 14 days after the “effective date” of Commissioner’s “amendment” – whether Commissioner had power to amend BAS – effect of allocating an amount to a Running Balance Account – meaning of “RBA interest day” – whether correspondence to Commissioner a “notification that is required for the refund” under s 8AAZLG of the Taxation Administration Act 1953 (Cth)

Administrative Appeals Tribunal

The court orders that:

1 The appeal be dismissed.

2 The appellant pay the respondent’s costs of the appeal, as agreed or assessed.

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2020/2020fcafc0010>

*Greig v Commissioner of Taxation* [2020] FCAFC 25, Kenny, Derrington and Steward JJ, 02 March 2020

Taxation – allowable deductions – where taxpayer made 64 separate acquisitions of shares in one company – whether the taxpayer’s acquisition of shares was made in a “business operation or commercial transaction” within the meaning of the principle established in *Federal Commissioner of Taxation v Myer Emporium Ltd* (1987) 163 CLR 199 – whether loss or outgoing was incurred in gaining or producing assessable income – whether the shares had been held by the taxpayer on revenue account – whether the shares were purchased in circumstances which were akin to, or indistinguishable from, an ordinary investment engaged by a private investor

Taxation – whether legal fees and share losses incurred by the taxpayer by reason of the compulsory transfer and cancellation of his shares were deductible under s 8-1 of the Income Tax Assessment Act 1997 (Cth)

The court orders that:

1 The appeal be allowed.

2 The orders made by the Court on 20 July 2018 be set aside and in lieu thereof, it be ordered that the appeal against the objection decision dated 9 May 2017 be allowed.



3 The matter be remitted to the respondent to take such further administrative action as is necessary to give effect to these orders.

4 The respondent pay the appellant's costs of the appeal and of the proceeding before the learned primary judge, to be taxed in default of agreement.

<https://jade.io/article/716790>

*Hii v Commissioner of Taxation (No 2)* [2020] FCA 345, Logan J, 4 Mar 2020

Taxation - where the applicant seeks to challenge under s 39B of the Judiciary Act 1903 (Cth) an audit decision and an objection decision in relation to income tax, shortfall penalty and non-lodgement penalty assessments - where the audit decision overtaken wholly by the assessments - where subsequent objection decisions overtaken wholly by the institution of taxation appeal and administrative review proceedings - where those taxation appeal and administrative review proceedings dismissed by the Federal Court and the Administrative Appeals Tribunal - where applicant has previously instituted proceedings to challenge collaterally the assessments both in the Federal Court of Australia (Federal Court) and the High Court of Australia (High Court) - where those proceedings were dismissed by Federal Court and by High Court - where s 39B proceedings another form of collateral challenge that bear resemblance to those already disposed of in the Federal Court and the High Court - whether s 39B application should be dismissed summarily

Held: s 39B challenge dismissed

Practice and procedure - where the applicant seeks to challenge under s 39B of the Judiciary Act 1903 (Cth) an audit decision and an objection decision in relation to income tax, shortfall penalty and non-lodgement penalty assessments - where the audit decision overtaken wholly by the assessments - where subsequent objection decisions overtaken wholly by the institution of taxation appeal and administrative review proceedings - where those taxation appeal and administrative review proceedings dismissed by the Federal Court and the Administrative Appeals Tribunal - where applicant has previously instituted proceedings to challenge collaterally the assessments, objection and audit decisions in either or each of the Federal Court and the High Court - where those proceedings were dismissed by Federal Court and by High Court - whether the applicant was earlier denied natural justice - whether natural justice requires an affected person to avail themselves of an extended opportunity to be heard - whether the proceedings are subject to Anshun estoppel - whether the proceedings are an abuse of process or vexatious - whether applicant had frequently and without reasonable cause commenced or continued prior proceedings without reasonable case - whether vexatious proceedings order should be made - s 37AO of the Federal Court of Australia Act 1976 (Cth)

Held: vexatious proceedings order made

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0345>

*Deputy Commissioner of Taxation v Gould* [2020] FCA 337, Davies J, 12 March 2020

Evidence - application for interlocutory orders regarding examination of judgment debtor conducted before a Registrar under s 41.10 of the Federal Court Rules 2011 (Cth) - privilege against self-incrimination - whether Registrar has the power to issue a certificate under s 128 of the Evidence Act 1995 (Cth) - whether Evidence Act 1995 (Cth) applies to examination of a judgment debtor - whether examination "proceedings in a federal court" within the meaning of the Evidence Act 1995 (Cth) - whether Registrar required to apply the rules of evidence when conducting examination - nature of examination of judgment debtor examination as part of inter partes proceeding requires Registrar to apply rules of evidence

The court orders that:

1 The respondent's amended interlocutory application dated 5 March 2020 is dismissed.

2 No order as to costs.

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0337>

*Commissioner of Taxation v Bosanac (No 6)* [2020] FCA 339, McKerracher J, 16 March 2020

Practice and procedure - cross-vesting - application for transfer of proceedings to the Family Court of Western Australia under s 5(4) of the Jurisdiction of Courts (Cross-vesting) Act 1987 (Cth) - whether appropriate and in the interests of justice to cross-vest - whether Commissioner of Taxation's claim for declaratory relief over property interests was a 'matrimonial cause' – whether Commissioner's claim for declaratory relief would conflict with relief sought under ss 78 and 79 of the Family Law Act 1975 (Cth) – in circumstances where pursuing alteration of property interests under s 79 only a 'mere possibility'

Practice and procedure – application for variation of freezing orders – where variation sought so that applications for costs orders in the Family Court of Western Australia can be made

The court orders that:

1 The cross-vesting application be dismissed.

2 Order 10 in Annexure A to the orders made on 17 June 2015 and extended on 24 June 2015, 29 July 2015 and varied and extended on 22 October 2015 and further extended on 1 December 2015 be amended to add the following:

(ba) transferring funds to the second respondent in compliance with any order made by the Family Court of Western Australia for you to pay the second respondent's legal costs in the Family Court of Western Australia proceedings.

3 Costs of the application be in the cause.

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0339>

## **New South Wales**

*Snell v Deputy Commissioner of Taxation* [2020] NSWCA 29, Gleeson JA at [1], Brereton JA at [2], Barrett AJA at [102], 04 March 2020

Taxes and duties – Penalty proceedings under (CTH) Taxation Administration Act 1953 – Obligation to remit amounts withheld from wages and salaries paid to employee – Requirements of director penalty notice – Where amount claimed by Commissioner changed after giving director penalty notice – No requirement to give further notice before commencing recovery proceedings - No requirement to commence proceedings within a reasonable time after expiry of notice

Taxes and duties – Penalty proceedings under (CTH) Taxation Administration Act 1953 s 269-20 – Defence of justifiable non-participation in management under (CTH) Taxation Administration Act 1953 s 269-35 – What constitutes participation in management for the purposes of the defence – The defence must be established for the entire period from the “due day” until at least the expiry of the director penalty notice

Held, dismissing the appeal (per Brereton JA; Gleeson JA and Barrett AJA agreeing):

1 A DPN is required to state what the Commissioner thinks is the unpaid amount of the company's liability, as at the date of the notice; however, the actual amount of the penalty recoverable is not dependent on nor controlled by what the Commissioner “thinks” it is at the time when the DPN is given. The only temporal requirement with respect to the DPN is that proceedings must not be commenced until the end of 21 days after the Commissioner gives the notice; there is no requirement that proceedings be commenced within any specific, or a reasonable, time after the notice is given: at [38]-[41].

2 To establish the defence provided by s 269-35(1), a director must satisfy its requirements for the entire period from the “due day” for the relevant period until at least expiry of the DPN, if not until compliance, administration or winding-up: at [96].

<https://jade.io/article/717050>

Colin Fong

## **8 Call for papers and submissions**

**Australian Tax Review Special Issue: Current Topics in International Taxation**

**Guest Editor** Associate Professor Antony Ting, University of Sydney

**General Editors** Professor Kerrie Sadiq, Queensland University of Technology  
Professor Dale Pinto, Curtin University

Australian Tax Review is a highly regarded refereed taxation journal published since 1971. It has maintained its “A” ranking in the 2019 Australian Business Deans Council journal quality list. It is seeking the submission of high-quality articles for a special issue of the journal to be published at the end of 2020. All submissions will be subject to the journal’s usual rigorous double-blind refereeing process.

### **Themes**

The international tax regime has experienced significant challenges and changes in recent years. The OECD BEPS project rode on the unprecedented political will aiming to strengthen international tax rules to tackle international tax avoidance by multinational enterprises. While the Final Reports of the 15 Action items were published in 2015, the OECD continues to work through the Inclusive Framework on several important topics, including the taxation of the digital economy, and special issues of transfer pricing.

Countries have responded to the BEPS reports in different ways. Australia has embraced some recommendations enthusiastically, but is reluctant to adopt others.

The domestic law on international taxation has been equally exciting. Major recent tax cases in this area cover many important issues, including the increasingly important transfer pricing rules and the interaction between domestic tax law and tax treaties.

This special issue covers some of these interesting matters, providing a snapshot of the international tax regime with respect to Australia at this exciting time in the tax world.

### **Call for papers**

This special issue calls for submission of papers that engage with current topics in international taxation. Possible themes include, but are not limited to, the following issues:

BEPS project: implications for Australia

Transfer pricing issues, including the profit split method

Taxation of the digital economy, including potential reform of the allocation of taxing rights among residence and source countries, and possible policies to address BEPS risks exacerbated by the rise of digital businesses

International taxation issues under domestic law, including anti-BEPS measures (e.g.

Multinational Anti-Avoidance Law, Diverted Profits Tax and Anti-Hybrid Rules), recent court cases on transfer pricing and the interaction between domestic law and tax treaties.

### **Guidelines for Authors**

All submissions should adhere to the format and style guidelines of the journal. A guide for authors and other relevant information for submitting papers are available at

<https://legal.thomsonreuters.com.au/support/pdf/authorsupport/Australian-Tax-Review-Thomson-Reuters.pdf>

### **Timing**

This special issue will be published as Issue 4 in November/December 2020. Please note that manuscripts for this special issue should be submitted by 15 June, 2020. Early submissions and communications with the guest editor (Antony Ting: [antony.ting@sydney.edu.au](mailto:antony.ting@sydney.edu.au)) are encouraged if you wish to explore the possibilities of submitting a paper. We would also appreciate your bringing this call to the attention of your colleagues and those in other disciplines who might wish to contribute.

Antony Ting, Kerrie Sadiq, and Dale Pinto  
February 2020

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IBFD's **World Tax Journal** is a fully peer-reviewed scientific journal with worldwide scope. It is indexed in the American Economic Association's electronic bibliography (EconLit) and has been accepted for inclusion in the Scopus database. Our editorial team welcomes all comprehensive articles on topics of international, comparative and regional taxation  
IBFD Instructions to authors journals February 2019  
[https://www.ibfd.org/sites/ibfd.org/files/content/doc/17\\_015\\_var\\_author\\_instr\\_journals\\_final\\_feb\\_2019.pdf](https://www.ibfd.org/sites/ibfd.org/files/content/doc/17_015_var_author_instr_journals_final_feb_2019.pdf)

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**Austaxpolicy.com Blog, TTPI Working Papers and Policy Briefs**  
Both hosted and edited by the **Tax and Transfer Policy Institute**.

Please follow us on Twitter @Austaxpolicy or sign up to our fortnightly email newsletter. Contributions encouraged and sought as Austaxpolicy Blog enters our second year of publishing short, accessible but not dumbed down articles based on your substantive research, recently published or in progress. If you like what you read, please distribute it among your networks and also circulate the Blog and this call for contributions to others who may be interested.

We also seek well prepared and substantial **Working Papers** to publish in our series, from all disciplines, both on the website and on SSRN (where they will be promoted in tax, public policy lists). Please send your contribution to [tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au) for review.

Finally, we seek **Policy Briefs** for our series which provides an accessible and rigorous explanation of tax issues or concepts for policy-makers, students, academics and interested members of the public. Policy Briefs will be published as a numbered report in PDF format and also as Brief on the Austaxpolicy.com blog. Please contact us at [tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au) , we look forward to hearing from you.

## **9 Electric Vehicle Owners in Queensland**

Griffith University in collaboration Queensland Government, Transport and Main Roads (TMR) and Energy Queensland (EQ) are surveying "Early Adopters of Electric Vehicles". We want to know your experience in charging, driving and how your views on policy incentives may encourage other consumers to purchase an electric vehicle in Australia. With your help, we hope to gain insight into these areas. Thank you for your support and contribution (Griffith University Ethical Clearance Ref No: 2019/1031). Click this link below to contribute your valuable thoughts and information to our research:  
<https://prodsurvey.rcs.griffith.edu.au/prodls200/index.php/778768?lang=en>

## **10 Tax and related meetings**

The **School of Taxation and Business Law at UNSW Sydney** will be holding a one-day workshop entitled "**Tax dispute resolution: International experiences and accessibility**" on Monday 6 April 2020 (from 9 am to 5 pm). The workshop will be held in Room 2063,

Quadrangle Building (Building E15 in electronic Kensington Campus Map) of UNSW Sydney.

The principal aim of the workshop is to compare the experiences of developed and developing countries in tax dispute resolution and to consider how to improve taxpayers' accessibility to tax dispute resolution beyond the tax office or similar revenue authority.

The program will comprise both short presentations and a panel discussion at the end. Speakers will include both academic and non-academic experts in the field of tax dispute resolution.

You are warmly invited, on a self-funded basis, to attend the above workshop. For catering purposes (morning tea, lunch and afternoon tea) please send your reply to [b.tran-nam@unsw.edu.au](mailto:b.tran-nam@unsw.edu.au) by 15 March 2020.

We look forward to seeing you at the workshop.

Best regards,

Binh

(on behalf of Binh Tran-Nam and Michael Walpole)

**UNSW School of Taxation and Business Law** will be hosting the 14th International Conference on Tax Administration, a prestigious biennial event that brings together leading tax administrators, academics and practitioners from around the globe. The theme of the 2020 conference is: 'New Frontiers in Tax Administration'

During this two-day event, conference speakers will present on:

cutting-edge initiatives in service delivery and compliance including digital and data use, tap and go, and artificial intelligence;

data policy, ethical data exploitation, cyber security and new developments in regulating data platforms;

globalisation of revenue administration;

tax dispute resolution and new approaches to protecting the vulnerable including the elderly, impaired and those in remote areas; and

administrative policy options to assist capacity building in the Asia Pacific region in responding to new business models developing in the digitized economy.

Join us to hear from leading academics, policy makers and practitioners about current and future global trends, including:

David Bradbury, Head of the Tax Policy and Statistics Division in the OECD's Centre for Tax Policy and Administration;

Nina Olson Centre for Taxpayer Rights;

Senior Australian and international tax officials, and Academics from UNSW Business School.

Event details:

When: 9-5pm, 7 & 8 April 2020

Where: Conference: Hilton Sydney, 488 George Street, Sydney, 2000 & Dinner (7 April): The Tea Room, QVB, 455 George Street, Sydney, 2000

Cost: \$935 for early conference registrations

Contact: Maree Magafas, UNSW Business School, School of Taxation and Business Law

Register here: <https://www.business.unsw.edu.au/news-events/events/14th-international-conference-on-tax-administration>

Conference organisers have secured with the Hilton a special delegate rate of 10% off the advertised day rate. To book, please visit here or call on +61 (0)2 9266 2000 referring to group code GDYNU for a discounted rate (10% off from hotel best available rate)

The **annual tax research symposium**, normally organised by Griffith University, and held in July, will not run in 2020 because of the Covid-19 pandemic.

The **2021 ATTA conference** will be hosted by the University of Canterbury from 20 to 22 January 2021 and will be held at Rydges Latimer in the Christchurch CBD. The theme is: *The Future of Tax: More than Just Politics?*

For more information, please contact:

Alistair Hodson [alistair.hodson@canterbury.ac.nz](mailto:alistair.hodson@canterbury.ac.nz)

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The **Tax Institute's** website [www.taxinstitute.com.au](http://www.taxinstitute.com.au) lists many conferences, conventions, seminars, and breakfast clubs. For further enquiries, contact Phillipa Cardigan (02) 8223 0045 or email [phillipacardigan@taxinstitute.com.au](mailto:phillipacardigan@taxinstitute.com.au) or register online at [www.taxinstitute.com.au](http://www.taxinstitute.com.au)

Call the National Events team on 1300 733 842 for more details.

Please contact the National Events Team on 1300 829 338 or by email, [nationalevents@taxinstitute.com.au](mailto:nationalevents@taxinstitute.com.au) Follow us on Twitter @TaxInstituteOz

## Overseas

**American Accounting Association** Calls for paper website <http://aaahq.org/calls/default.cfm>

**Canadian Tax Foundation** <http://www.ctf.ca/ctfweb/en>

**Institute for Fiscal Studies Conferences and seminars**

<http://www1.ifs.org.uk/conferences/index.shtml>

**Institute for Austrian and International Tax Law** 2020 events: The topics of the seminar sessions and other events can always be found at [www.wu.ac.at/taxlaw](http://www.wu.ac.at/taxlaw). Please see the website for most up-to-date information on them.

April 2020

- April 09, 2020 Workshop: "Vienna Multistakeholder Group on Improving Cross Border Dispute Resolution: New Institutional Framework"
- April 17-18, 2020 Wiener Bilanzrechtstage: "Kauf und Verkauf von Unternehmen" (in German)
- April 20, 2020 Colloquium: "Current Developments in European and International Tax Law", Ari Glogower, Alessandro Bucchieri
- April 22, 2020 Wolfgang Gassner Memorial Lecture: "Österreich auf dem Weg zur Einheitsbilanz - ein Vorbild für Europa?", Heribert Anzinger, Discussant: Claus Staringer (in German)

May 2020

- May 04-08, 2020 Advanced Transfer Pricing Course (General Topics)
- May 05, 2020 WU Transfer Pricing Workshop
- May 06, 2020 WU Transfer Pricing Workshop
- May 07, 2020 WU Transfer Pricing Workshop

- May 07, 2020 VAT-Symposium: "Abgrenzung Drittstaat zu Europäischer Union aus umsatzsteuerlicher Perspektive: Notwendigkeit oder Systembruch?" (in German)
- May 11, 2020 Panel Discussion of Lawyers (in German)
- May 14-16, 2020 Conference: "Tax Treaty Case Law Around the Globe" (Tilburg)
- May 18, 2020 Colloquium: "Current Developments in European and International Tax Law", Peter Hongler, Graeme Alan Wood, Jozef Kavuliak
- May 25, 2020 KPMG-WU-Workshop: "Verzinsung im Abgabenverfahren", Florian Fiala, Andreas Kronawetter (in German)

June 2020

- June 08, 2020 Colloquium: "Current Developments in European and International Tax Law", Jens Wittendorff, Katharina Schlücke
- June 15, 2020 27. Vienna Symposium on International Tax Law: "'Tax Covered' – The Scope of Double Taxation Conventions"
- June 18-20, 2020 EATLP Congress: "Taxation and Value Creation"
- June 18-20, 2020 Seminar: "Double Tax Treaties in Case Studies – Senior Level"
- June 25, 2020 Semesterclosing (in German)

July 2020

- July 02-04, 2020 Rust Conference: "Mission Completed? The Implementation and the Lasting Effects of the Multilateral Instrument (MLI)"
- July 06-10, 2020 Advanced Transfer Pricing Course (Benchmarking)
- July 13-17, 2020 CEE Vienna International Tax Law Summer School 2020

September 2020

- September 11, 2020 Klaus Vogel Lecture: "Crossroads of Bilateral Investment Treaties and Taxation"
- September 21, 2020 KSW-Information Evening, Claus Staringer (in German)
- September 21-22, 2020 Workshop: "Tax Transparency and Corruption"
- September 21-25, 2020 Advanced Transfer Pricing Course (Specific Topics)
- September 21, 2020 WU Transfer Pricing Workshop
- September 24, 2020 WU Transfer Pricing Workshop
- September 30, 2020 IFA-Event: "Das Internationale Steuerrecht im Umbruch – vom Steuermodell einer digitalen Wirtschaft zu einem neuen, globalen Besteuerungskonzept" (in German)

**International Bureau of Fiscal Documentation.** Various courses in Amsterdam, the Netherlands or in Malaysia or elsewhere. For details, see <http://www.ibfd.org> The IBFD International Tax Academy (ITA) runs an extensive international course program. Generally all courses are held in Amsterdam. Should you require any further information or wish to register please refer to their web site [www.ibfd.org](http://www.ibfd.org) or contact the International Tax Academy at +31-20-554 0160 or by e-mail [ita@ibfd.org](mailto:ita@ibfd.org)

For courses go to <http://www.ibfd.org/Training>

IBFD International Tax Courses - See also <http://www.ibfd.org/Training/Find-course>  
International Tax, Legal and Commercial Aspects of Mergers & Acquisitions 11-13 May 2020, Amsterdam

6th Africa Tax Symposium 20-22 May 2020, Arusha, Tanzania.

IBFD Masterclass 18-19 May 2020 as a prelude to the 6th IBFD Africa Tax Symposium,  
Tax Accounting, Reporting and Control 25-27 May 2020, Amsterdam

Transfer Pricing and Intra-Group Financing 28-29 May 2020, Amsterdam

US Corporate Taxation 22-24 June 2020, Amsterdam

**International Fiscal Association Congresses** <http://www.ifa.nl/pages/default.aspx>  
IFA 2020 Congress, **Cancun**, Mexico, 4-8 October 2020 <https://www.ifacancun2020.com>

**International Tax Planning Association Forthcoming meetings**

<http://www.itpa.org/meetings.html>

**5<sup>th</sup> International Taxpayer Rights Conference, 30 September – 1 October 2020, South Africa** The Center for Taxpayer Rights is convening the 5th International Conference on Taxpayer Rights on 30 September and 1 October 2020 in Pretoria, South Africa, hosted by the African Tax Institute at the University of Pretoria, with technical assistance from the International Bureau of Fiscal Documentation (IBFD). This year's conference theme is *Taxpayer Rights, Human Rights: Issues for Developing Countries*. This ground-breaking conference will include presentations by practitioners, scholars, members of the judiciary, and government officials on:

- Taxpayer rights as human rights;
- Taxation as a means to achieving Sustainable Development Goals (SDGs) in Africa and other developing countries;
- Independent administrative appeals and the promotion of integrity and fairness in the tax system;
- The role of legal privilege in the protection of taxpayer rights;
- Strengthening the rule of law and the protection of taxpayer rights in international tax disputes;
- Digitalization of tax administration and the implications for protection of taxpayer and human rights; and
- Barriers to access to justice and their impact on achieving Sustainable Development Goals.

Visit us at [taxpayer-rights.org/international-conference](http://taxpayer-rights.org/international-conference) for full program, or for more information contact us at [atinfo@taxpayer-rights.org](mailto:atinfo@taxpayer-rights.org)

Other useful tax and law related conference websites include the International Bar Association: [http://www.ibanet.org/Conferences/conferences\\_home.aspx](http://www.ibanet.org/Conferences/conferences_home.aspx)  
IBFD Course calendar <http://www.ibfd.org/portal/app?bookmarkablePage=org.ibfd.portal.presentation.TaxCourses>  
International Events and Law Conferences <http://internationaleventsandlawconferences.yolasite.com>  
Conferences in Australia <http://www.conferencealerts.com/country-listing.php?page=1&ipp=All&country=Australia>  
New South Wales Bar Association [http://www.nswbar.asn.au/docs/professional/prof\\_dev/CPD/programme/index.php](http://www.nswbar.asn.au/docs/professional/prof_dev/CPD/programme/index.php)  
Law Council of Australia <http://www.lawcouncil.asn.au/lawcouncil/index.php/conferences>  
Practising Law Institute <http://www.pli.edu/>  
New York County Lawyers Association <http://www.nycla.org>  
American Bar Association Taxation CLE topics [http://www.americanbar.org/cle/cle\\_courses\\_by\\_topic/taxation.html](http://www.americanbar.org/cle/cle_courses_by_topic/taxation.html)  
New York Bar Association <http://www.nysba.org/>  
Hieros Gamos Worldwide Law Events Calendar <http://www.hg.org/legal-events.asp>  
For Australian ones <http://www.hg.org/legal-events-australia.asp>  
For social sciences and humanities conferences, meetings etc, see Mind: The Meetings Index <http://www.interdok.com/mind>  
See also the magazine *Australian Conference & Exhibition Diary*, Vamosi Information Publication.

## 11 Recent publications

**Bold** indicates ATTA members. Readers are encouraged to notify the Editor of recently written publications for notification, in these pages. Please note some of the overseas publications listed may not yet be available locally.



## Local

*Austaxpolicy*: The Tax and Transfer Policy Blog <<http://www.austaxpolicy.com>> Recent postings include:

Policy Choices and Automation: How Benefits Systems Can Create Unjust Debts, Jane Millar and Peter Whiteford, 20 February 2020

Towards Simplification of Value Added Tax Compliance for Small Businesses in Botswana – Lessons from New Zealand, **Tshepiso Makara** and **Adrian Sawyer**, 17 February 2020 | by Tshepiso Makara and Adrian Sawyer

Since its introduction in July 2002, the Botswana Value Added Tax (VAT) system has gone Minimising Potential Tax Avoidance by Strengthening Transfer Pricing Policy in Indonesia, Maria RUD Tambunan, Haula Rosidiana and Edi Slamet Irianto, 11 February 2020 |

The Need for Better Scrutiny of Government Spending, John Hewson, 04 March 2020

The Tax System Implications of Universal Basic Income, Myles Bayliss, 28 February 2020

In the Midst of an LNG Export Boom, Why Are We Getting so Little for Our Gas? **Diane Kraal**, 25 February 2020

(2019.) 48 (3) *Australian Tax Review*

Editorial – General Editors: **Dale Pinto** and **Kerrie Sadiq** - The Morass of Our Tax Regime  
The Application of Australia’s Domestic Tax Laws and Tax Treaties Where a Foreign Company is a Resident – Norman Hanna

Streaming of Franking Credits Curtailed by Bamford-Induced Amendments – an Unintended Consequence? – **Brett Freudenberg** and **Dale Boccabella**

Tax Implications of Intangibles in the World of the BEPS: Do APAs Still Have a Role to Play in the Tax Planning Strategies of Multinationals? – **Ranjana Gupta**

(2019.) 48 (4) *Australian Tax Review*

Editorial – General Editors: **Dale Pinto** and **Kerrie Sadiq** - The End of Another Busy Year for Tax

Australia’s System for Relieving Foreign Source Income from Double Taxation: Yesterday, Today and Tomorrow – The Hon Richard Edmonds AM SC

Digitalisation and Broadcasting: Evaluating the Application of Royalty Withholding Tax to Digitalised Business Models – **Celeste M Black**

Fleming, John ‘The limits of the privilege against self-incrimination’ (2019) No 61 *Law Society Journal* 78-79

**Kraal, Diane** ‘In the midst of an LNG export boom, why are we getting so little for our gas?’, *The Conversation* 17 February 2020 <https://theconversation.com/in-the-midst-of-an-lng-export-boom-why-are-we-getting-so-little-for-our-gas-131461>; Reprinted in *The New Daily* 18 February 2020 [https://thenewdaily.com.au/finance/finance-news/2020/02/18/lng-producers-tax-revenue/?utm\\_source=Adestra&utm\\_medium=email&utm\\_campaign=Morning%20News%20-%2020200219](https://thenewdaily.com.au/finance/finance-news/2020/02/18/lng-producers-tax-revenue/?utm_source=Adestra&utm_medium=email&utm_campaign=Morning%20News%20-%2020200219)

(2019) 22 (3) *Tax Specialist*

Succession of a super fund - Hanrahan, Laura

Permanent establishments: Past, present and future - Dorevitch, Simon

Testamentary trusts: The need for integrity, effectiveness and quality - Anderson, Emily

Tackling financial crime and protecting tax revenues through global collaboration - McGillivray, Allastair

(2019) 22 (4) *Tax Specialist*

Restructuring tricks and traps - Bishop, Megan

Tax disclosures: Is sunlight the best disinfectant? Coia, Enzo; Williams, Anna  
GST implications of ecommerce and goods warehousing - **Pearce, Prafula; Pinto, Dale**  
The omnipresence of accounting on tax matters - Rens, Tracey; Earl, Melanie

(2019) 22 (5) *Tax Specialist*

Fraud and evasion - Marks, David W  
Changes to the US tax rules - **Vann, Richard**  
In the zone: Tax relief for the Australian bush - **Fullarton, Lex**  
Superannuation and estate planning - Colley, Graeme

(2019) 23 (1) *Tax Specialist*

Tax consolidation for SMEs - How, Simon  
Family law - Hutchens, Briony  
Anti-hybrids: The current state of play - Hirst, Andrew  
New Victorian economic entitlement duty - Jorgensen, Ron

(2019) 23 (2) *Tax Specialist*

SME and private clients: Transfer pricing outside the top 1,000 - O'Carroll, Aileen; Cornish, Christine  
Insights for transfer pricing litigation - Cosgrove, Michael; Phillips, Tamara  
The reconstruction provision in the Australian transfer pricing rules - Fullerton, Ian  
The MLI - Australia's other income tax treaty - **Cooper, Graeme S**  
Applying GST to low value goods - Dorevitch, Simon

(2020) 54 (7) *Taxation in Australia*

December - what happened in tax?  
Insights from the Institute  
Looking ahead with 2020 vision - Godber, Peter  
The best is yet to come - Hurst, Giles  
Tax reform can't wait - Quigley, Bruce  
Active asset test  
How The Tax Institute propelled a partner's career - Boulous, Suzie  
Member Profile  
Reconsidering the Commissioner's remedial power - de Zilva, Nathan  
International tax: "Pillars" of strength or ruins in the making? **Burnett, Chloe**  
Tax and estate planning in 2020: What has changed? Burgess, Matthew  
Trusts and the franking credits trap: Can we fix it? Spencer, Laura  
When SMSF advice is unlawful - Butler, Daniel  
Pavihi - The helpful bank teller Norbury, Michael  
Significant global entities - Crosland, Vanessa; Stoyanova, Teya

(2019) 54 (6) *Taxation in Australia*

Family law asset protection of a testamentary trust - Peiros, Katerina  
November - what happened in tax?  
Insights from the Institute  
Not goodbye, but reflection and thanks - Neilson, Tim  
Another eventful year at The Tax Institute - Hurst, Giles  
Trade-offs and the federal Budget - Ananda, Angie  
Vacant land deductions  
Testamentary trusts: Reforms at a trickle - Jones, Daryl  
Take the road to success with The Tax Institute  
Member Profile  
Residence tests for individuals: Impact of the Harding decision - **Blissenden, Michael; Kenny, Paul**  
Deceased estates, real property and real issues - Wilson, Ben; Ashworth, Caitlin

Reliability of evidence in tax disputes - Calokerinos, William  
TD 2019/D6 and TD 2019/D7: (Further) unintended consequences? Campbell, Sam  
NALI warning: LCR 2019/D3 - Butler, Daniel; Figot, Bryce  
Is it a capital or an income expense? Norbury, Michael

(2019) 54 (5) *Taxation in Australia*

October - What happened in tax?

Insights from the Institute

Why tax is much more than technical skills - Neilson, Tim

Recognising our family of members - Hurst, Giles

Review of the Tax Practitioners Board - Quigley, Bruce

Testamentary trusts and minors

Think you're selling shares in a small business? Guess again - Bembrick, Peter

CTA Program: Advance your knowledge

Member Profile

Payroll tax game changer? McKee, Matthew; McEvoy, Rose

Assessing market value ratios for roll-over relief provision - Chu, Hung

SA land tax developments: Aggregation avalanche - Slegers, Peter; Pascale, Joshua; Marateo, Daniel

The appointor: Common problems- Monotti, Will

SMSF investment strategies: Are they a financial product? Butler, Daniel; Figot, Bryce

The case of the knight's advocate - Norbury, Michael

Walls close in on trustee discretion - Einsiedel, Lachlan

## **Overseas**

(2019) Volume 72 (3) *National Tax Journal*:

Deterring Property Tax Delinquency in Philadelphia: An Experimental Evaluation of Nudge Strategies - Michael Chirico, Robert Inman, Charles Loeffler, John MacDonald, and Holger Sieg

The Effects of Required Minimum Distribution Rules on Withdrawals from Traditional IRAs - Jacob A. Mortenson, Heidi R. Schramm, and Andrew Whitten

Rules Versus Home Rule—Local Government Responses to Negative Revenue Shocks - Daniel Shoag, Cody Tuttle, and Stan Veuger

Firm Take-Up of a Corporate Income Tax Cut: Evidence from Vietnam - Anh Pham

Tariff Incidence: Evidence from U.S. Sugar Duties, 1890–1914 - Douglas A. Irwin

Earned Income Tax Credits and Infant Health: A Local EITC Investigation - Brian Hill and Tami Gurley-Calvez

(2019) Volume 72 (4) *National Tax Journal*:

The Geometry of International Tax Planning after the Tax Cuts and Jobs Act: A Riff on Circles, Squares, and Triangles - Michael P Donohoe, Gary A McGill, and Edmund Outslay

Macroeconomic Effects of Reducing OASI Benefits: A Comparison of Seven Overlapping-Generations Models - Jaeger Nelson and Kerk Phillips

Rethinking the Green New Deal: Using Climate Policy to Address Inequality - Aparna Mathur

States' Addiction to Sins: Sin Tax Fallacy - Lucy Dadayan

Taxing Wealth in an Uncertain World - Daniel Hemel

The Barriers Created by Complexity: A State-by-State Analysis of Local Sales Tax Laws in Light of the Wayfair Ruling - Whitney B Afonso

After Wayfair: What Are State Use Taxes Worth? John L Mikesell and Justin M Ross

Digital Services Taxes: Principle as a Double-Edged Sword - John Vella

The Superiority of the Digital Services Tax over Significant Digital Presence Proposals - Wei Cui

Superiority of the VAT to Turnover Tax as an Indirect Tax on Digital Services - Karl Russo

(2020) 73 (1) *National Tax Journal*

The EITC and Employment Transitions: Labor Force Attachment and Annual Exit - Riley Wilson

Does Inside Debt Moderate Corporate Tax Avoidance? Thomas R Kubick, G Brandon Lockhart, and John R. Robinson

Income Inequality and Redistribution in the Aftermath of the 2007–2008 Crisis: The U.S. Case - Vanda Almeida

The Declining Insurance Benefit in the Municipal Bond Market - Gila Bronshtein and Christos A Makridis

Tax-Exempt Municipal Bonds and the Financing of Professional Sports Stadiums - Austin J Drukker, Ted Gayer, and Alexander K Gold

The Influence of Autonomous Vehicles on State Tax Revenues - William F Fox

Governmental Expenditure Implications of Autonomous Vehicles - Ronald C Fisher

The Impacts of Autonomous Vehicles on Local Government Budgeting and Finance: Case of Solid Waste Collection - Benjamin Y Clark

## **12 Quotable quotes**

“Australia continues to host significant quantities of illicit funds from outside the country and is not doing enough to counter money laundering and tax avoidance, according to the 2020 Financial Secrecy Index.

The Tax Justice Network's index, released every two years, rates countries based on financial transparency.

The Financial Secrecy Index (FSI) ranks each country based on how intensely the country's legal and financial system allows wealthy individuals and criminals to hide and launder money extracted from around the world.

The Cayman Islands ranked as the world's biggest contributor to financial secrecy, as a result of the once-notorious tax haven increasing the volume of financial services it provides to non-residents.

The report also noted major risks emanating from Cayman's hedge fund industry, which uses companies, trusts and limited partnerships that are "cloaked in secrecy".

In second place was the United States, overtaking Switzerland (now ranked third).

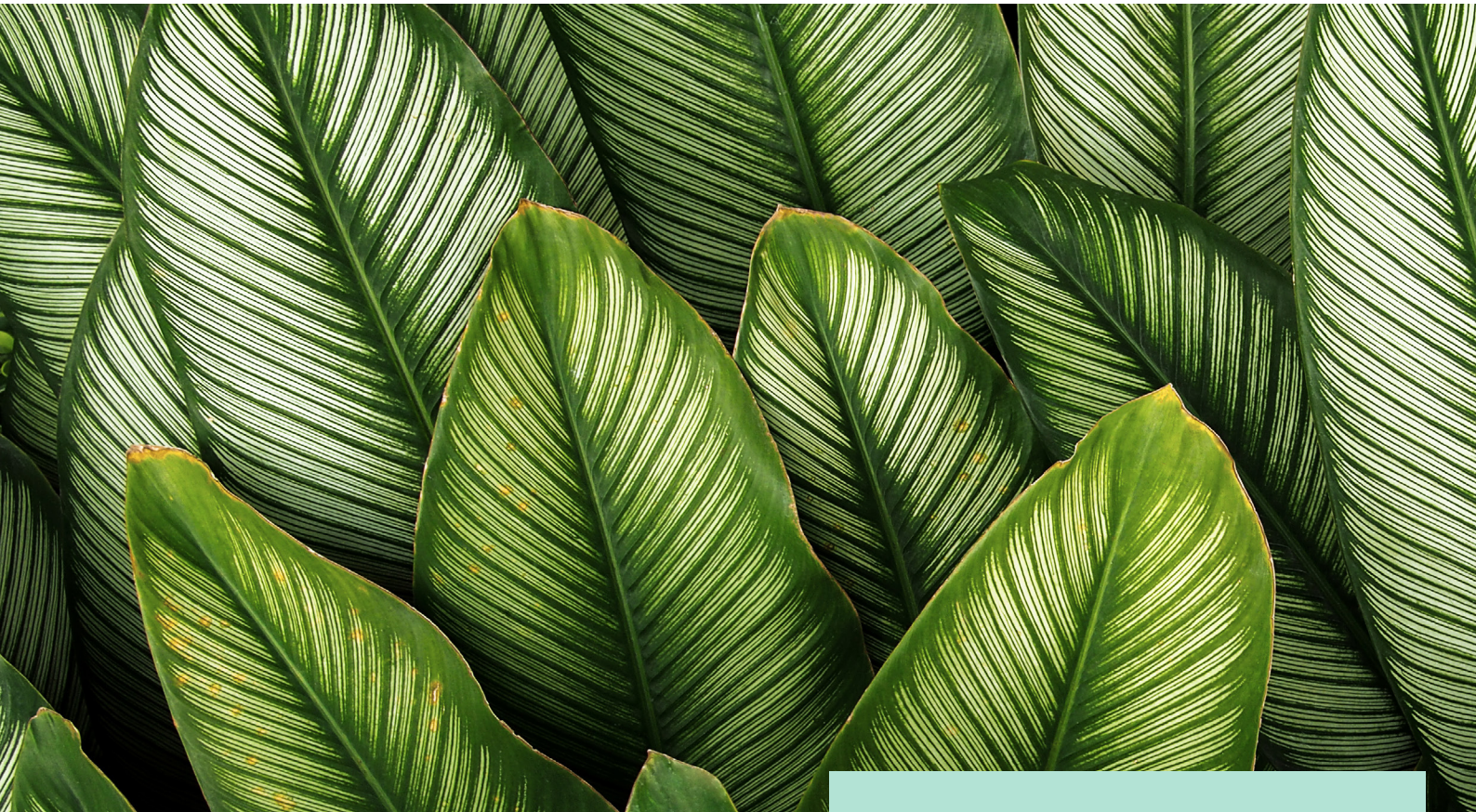
Australia is ranked at 48th position in this year's index, four places down from its 2018 position.

Despite its relatively low ranking, the report said, "Australia undoubtedly hosts significant quantities of illicit funds from outside the country".”

Source: Khadem, Nassim ‘Australia a safe haven for illicit funds, but Cayman Islands the world's worst’ ABC News 19 February 2020 <https://www.abc.net.au/news/2020-02-19/australia-still-a-safe-haven-for-illicit-funds/11977994>

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"A person doesn't know how much he has to be thankful for until he has to pay taxes on it."

- *Ann Landers*

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## 01 | PRESIDENTIAL COLUMN

### President's Note

Hello and welcome to the new version of the ATTA Newsletter. Huge thanks to ATTA Vice-President Annette Morgan and her colleague Stephanie Bruce who have updated the format of the ATTA Newsletter. We hope that you will enjoy the new look.

I am saddened with the news of the passing of one of our ATTA community – John Passant. I appreciated John's intellectual curiosity, his quick wit and his kind heart. John brought great colour to our community. He often challenged our worldview and our community was richer for that challenge. We have a tribute to John at item [4] of the Newsletter.

I write to you in the second week of NZ lockdown. Last week (on 25 March – just before lockdown started) we had the COVID-19 Bill introduced under urgency and passed through all stages. This included a number of

tax measures (e.g. restoring building depreciation, extending the threshold for immediate low-value asset write-offs, allowing use-of-money interest to be waived and allowing wider access to the in-work tax credit) all of which now look relatively minor compared to subsequent announcements. I have also watched the Australian government commit significant funds to support the Australian economy.

I have been impressed by how quickly and effectively our communities have adjusted to our new ways of living and working. In New Zealand, we are encouraged to stay within our "bubble" – the new name for the group of people we live with. The idea is that for the next few weeks we stay at home in our bubble to keep ourselves and others safe.

Despite the complexities of our



current environment, I hope this finds you safe and well, and in good spirits. I also hope you are finding time to look after yourselves, your family and your extended networks.

All the best,

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

The 33<sup>rd</sup> Annual ATTA conference will be hosted by the University of Canterbury (UC) Business School at the UC from 20 to 22 January 2021 in Christchurch, New Zealand. It will be held at Rydges Latimer in the Christchurch CBD, rather than at the UC. Bookings for a limited number of discounted rooms can be made direct to [Rydges Latimer here](#).

The welcome reception will be held at the International Antarctic Centre near Christchurch International Airport, with the conference dinner at the Great Hall at the Arts Centre in the CBD (part of UC's campus before it moved out of the city during the 1960-70s). A farewell BBQ will be held at Rydges Latimer at the conclusion of the conference.

**The theme is - The Future of Tax: More than Just Politics?**

***Due to COVID-19 we are monitoring the impact this may have on hosting the conference in Christchurch in 2021. We will provide further updates as we know more.***

More details will follow over the coming months.

Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz))

Andrew Maples ([andrew.maples@canterbury.ac.nz](mailto:andrew.maples@canterbury.ac.nz))

Alistair Hodson ([alistair.hodson@canterbury.ac.nz](mailto:alistair.hodson@canterbury.ac.nz))

Robert Vosslander ([rob.vosslander@canterbury.ac.nz](mailto:rob.vosslander@canterbury.ac.nz))

Shelley Griffiths ([shelley.griffiths@otago.ac.nz](mailto:shelley.griffiths@otago.ac.nz))

## 03 | ATTA AGM 2020 MINUTES

**Date & time:** Friday 24 January 2020 at 2.45pm

**Venue:** The Old Wool Store Hotel, Hobart

**Present:** 56

**Apologies:**

Michael D’Ascenzo, Michael Dirkis, Ann Kayis-Kumar, Anna Mortimore, Les Nethercott, Kerrie Sadiq, Miranda Stewart, Robin Woellner.

### 1. Minutes of the previous meeting which were published in the ATTA News May 2019 edition

Approved. Moved by Chris Evans, seconded Adrian Sawyer.

### 2. Matters arising from the minutes

Dealt with as part of general discussion.

### 3. Reports:

#### *President’s report*

It has been a great privilege to be in this role over the past year. Being in this role has made me very aware of the multiple support teams and individuals that keep this organisation as strong and as well connected as it is. Therefore, I would like to start by thanking some of the people that go to great lengths to keep us connected and administratively organised as an organisation.

First – enormous thanks to Colin Fong, who as editor of the ATTA Newsletter does so much behind the scenes to make sure we are kept up to date with what everyone is doing. Colin often tells me about things that happen in NZ before I know about it – so he really is not only well connected, but willing to use those connections for the benefit of all of us.

Second – to the ATTA Executive – and particular thanks to Brett Bondfield. All the Executive team put in a great effort, but the lions share often falls to Brett because of his significant institutional knowledge. Again, it’s one of those roles where you don’t see the work that goes on behind the scenes – and I know Brett often puts aside much of his Sundays to make sure that ATTA tasks get done.

Third – thank you to the conference organisers for this conference. One of the great skills of conference organisation is in making a conference look like it has been effortless to organise. We have benefited from some great Keynote speakers this year: Professor Henry Lischer, Dr Keith Kendall, Karen Payne, Scott Treatt and our Patron, Justice Pagone. I would also like to extend our gratitude to our sponsors. The conference benefits greatly from their presence and their financial assistance: Oxford University Press, ThomsonReuters, Wiley and UniSuper.

Thanks also to Annette Morgan, Donovan Castelyn, Helen Hodgson and their team for the publication of a great edition of JATTA this year.

I would also like to thank Maree Magafas from UNSW who helps every month with publishing the Newsletter – as well as many other things during the year, such as making sure we all have access to the photos after the conference.

We have introduced some new initiatives during the year – and continued some of the ongoing ones, including:

- Introducing the inaugural Patron’s prize for engagement with the judiciary– awarded to Craig Elliffe from Auckland University.
- Advancing Women in Tax Academia Scholarship – to assist in attendance and presentation at this conference. This was awarded during the year to Christine Peacock from Federation University.
- The ATTA Hill Medal, which was awarded to Brett Freudenberg for outstanding contributions to tax teaching
- Introduction of the Women in Tax breakfast initiative – organised by Bronwyn McCredie.
- Ongoing support for OUP ATTA Doctoral Series. OUP agreed to provide ongoing financial support for the OUP ATTA Doctoral Series. However, the panel decided not to make an award this year.

I look forward to another great year for ATTA in 2020.

*Lisa Marriott*

ATTA President

***Treasurer's report***

The Treasurer presented the accounts to the meeting and pointed to the fact that the 2019 conference was unlikely to bring in funds.

*Kathrin Bain*

ATTA Treasurer

***Secretary's report***

The Secretary noted there was nothing to add in addition to the President's Report and the Treasurer's presentation of the accounts.

*Brett Bondfield*

ATTA Secretary

**4. Election of 3 Executive Committee Members**

The three members whose 2-year terms were at an end were re-elected:

- Kathrin Bain
- Brett Bondfield
- Annette Morgan

The Executive advised the meeting that it had nominated Brett Bondfield as President Elect.

**5. Confirmation of State/Territory/NZ representatives**

- (ACT): Sonali Walpola;
- (NSW): Fiona Martin;
- (NT): Justin Dabner;
- NZ (Nth): Andrew Smith;
- NZ (Sth): Andrew Maples;
- QLD (Nth): Justin Dabner;
- QLD (Sth): Anna Mortimore;
- (SA): Dominic Carbone;
- (TAS): John Minas;
- (VIC): Diane Kraal;
- (WA): Helen Hodgson.

**6. Appointment of auditor**

Richard Collins was appointed as ATTA auditor.

**7. Expressions of interest for hosting ATTA 2022 and 2023**

These were encouraged and pursued outside the AGM.

ATTA 2021 to be hosted at the University of Canterbury, Christchurch, NZ.

**8. General business:**

A proposal from Justin Dabner to move to a biennial virtual conference [[attached page 5 for ease of reference](#)]  
This was discussed at some length with the following being some of the main themes raised:

- There is merit in exploring the practicalities and potential impacts of delivering all or part of an annual conference on digital platforms.
- A starting point may be delivering Keynote Addresses via digital platforms and then uploading them to the ATTA website.
- There is a continuing importance to be accorded to in person networking, particularly for early career academics/PHD candidates.
- Each annual conference should look to ways of minimising its environmental footprint.



## AGM General Business Annexure

Dear fellow ATTA members

### **Proposal to move to a biennial virtual conference**

As much as I have enjoyed and benefitted from attending ATTA conferences I have a suggestion that we consider hosting every second conference as a virtual conference. While I accept that the face-to-face aspect of the physical conference is particularly valuable from a networking perspective, my rationale for a biennial virtual conference is as follows:

1. Reduction in carbon emissions from our travelling to a venue. We can lead by example and be part of the solution to climate change, rather than the problem.
2. A reduction in the cost of attending.
3. The opportunity to vastly extend our coverage (and contacts) – attract speakers from other cultures and jurisdictions and attendees from all over the world (especially those who might not otherwise be able to afford to attend).
4. The software has evolved to allow better audience engagement and the opportunity for networking and social engagement.
5. The opportunity to both record presentations and have them at varying times can cater for time zone differences and other commitments of audiences.

In summary, we could make our conference more accessible and culturally and jurisdictionally diverse while also reducing our carbon footprint.

*Justin Dabner*

January 2020

## 04 | TRIBUTES TO JOHN PASSANT

Sadly John Passant passed away peacefully this morning leaving a huge hole in the universe.

Patricia was with him when he passed and he had seen his children before he passed.

John was passionate, radiating energy which shined through when he spoke at rallies and political meetings, when teaching, and even when just having a coffee. He was a radical activist, a prolific writer of letters to the papers, articles and on his blog, a poet, an academic and a senior officer in the ATO.

He railed against injustices and took action against them - organising and marching against apartheid, arguing for and participating in an occupation against library cuts at Monash University, speaking against the Gulf War with his two year old son in his arms and saying 'what about the fathers with children in Iraq?', to mention just a few.

He published two books of poetry. Millie and Jim from the Awesome used the words from some of these poems to create magical music. A CD of her music and of John reading some of his poems was launched a year ago. John and the Awesome also performed at the National Folk Festival, in Narooma and in Mallacoota before the fires.

He had been diagnosed with stage 4 lung cancer in July 2018. Targetted therapy knocked back the cancer for a while, but it came back again in 2019 leading to a spinal fracture in July 2019. After lots of work with the physiotherapists and some home renovations he was able to come home in a wheelchair last November.

Then he could be sitting at his computer, cup of tea at hand, writing and keeping in touch with friends, watching the news or the rugby league (did I mention he was a tragic St George supporter) and being part of family life. Despite more targetted therapy the cancer continued and in late February he struggled to breathe. He was on oxygen in hospital, too much to be able to have oxygen at home, and his condition worsened.

Given the limits on funerals, we will be organising a private funeral for the immediate family, but I hope to put together a memorial of his life with photos and a longer story to share. He will be sorely missed.

*Patricia Langenakker*



John Passant passed away peacefully on the morning of Sunday 5 April. His wife, Patricia, was with him when he passed.

John will be remembered among our tax community for his passion – for tax, for teaching and for politics. John was a proud radical activist, a prolific writer of letters to the papers, articles and on his blog. John was also a poet, an academic and a senior officer in the ATO. John was known for his fight against injustices - organising and marching against apartheid, arguing for and participating in an occupation against library cuts at Monash University, speaking against the Gulf War with his two year old son in his arms and saying ‘what about the fathers with children in Iraq?’, to mention just a few.



John was a barrister and solicitor of the Supreme Court of the ACT and of the High Court. He had two primary places of employment – the ATO and academia. He started his working life in the ATO in 1979 as a graduate. John then moved to academia in 1989, working as a Lecturer in the Faculty of Law at Australian National University. He worked in this role until 1996, before returning to the ATO for much of the next decade. He retired from working at the ATO as an Assistant Commissioner in 2008 and returned to academia. He taught at a number of universities including the University of Wollongong, the University of Canberra and ANU, teaching subjects that included “Fascism and anti-fascism” and “Revolution!”.

John’s research interests were widespread and include research on environmental issues, anti-avoidance and neoliberalism. John often adopted complex and challenging perspectives to his research, including Marxist legal theories. John was also well known for co-editing the Journal of Australian Taxation with John McLaren in recent years.

John published two books of poetry: Songs for the Band Unformed, published in 2016 and Whose Broken is This? published in 2018. I end this tribute with one of John’s poems. John did a poetry reading at the New Zealand ATTA conference in the Wairarapa in January 2017. He asked me to select a poem for him to read. I choose this one:

*Lisa Marriott*



## 05 | ALTERNATE ASSESSMENT GUIDANCE: COVID-19

### Tax Practitioners Board

#### Exam requirements for Board approved courses

- The TPB requires that at least 40% of the total assessment for a Board approved course be completed under some form of independent supervision. This requires assessments to be conducted under the supervision of an invigilator.
- Due to the recent impact of COVID-19, the TPB has reviewed this policy. In cases where supervised assessments cannot be conducted in line with the TPB's existing requirements, the following guidance is provided to all approved course providers.
- These arrangements will remain in place at least for the current study period (semester/trimester).
- The TPB will continue to monitor the situation and approved course providers will be notified of any policy changes should they occur. In particular, the policy will be updated to reflect any alternative arrangements approved by the Board under Option 3.
- This policy applies to all current Board approved courses. As appropriate, the TPB will update its proposed guidelines on Board approved courses to reflect this policy.

#### Option 1

Where possible and practicable, the TPB's preferred option is for an alternate assessment to be conducted either remotely (physically at a location) or through online invigilation (remotely proctored) under the following conditions:

- The alternate assessment assesses the same learning outcomes as the invigilated assessment would have.
- The alternate assessment meets the TPB's requirements regarding independent supervision. This means the remote or online invigilation is conducted through some form of live invigilation in terms of supervisory oversight.
- The approved course provider maintains a record of all individuals completing an alternate assessment through remote or online invigilation.
- The alternate assessment has the same weighting as the invigilated assessment.
- The alternate assessment continues to meet TEQSA or ASQA guidelines.

#### Option 2

Where Option 1 does not offer a practicable solution for approved course providers, the TPB will accept alternate assessments supervised through software driven invigilation (including utilising anti-plagiarism software). The software must offer authentication of candidates, coupled with a level of invigilation that can detect potential breaches of assessment conditions.

Further, under Option 2, the approved course provider is expected to meet the conditions set out in Option 1, other than the requirement regarding independent supervision.

#### Option 3

For approved course providers who are unable to meet the requirements of Option 1 or Option 2, the TPB will consider the use of other alternative assessment arrangements on a case by case basis.

Further, under Option 3, the approved course provider is expected to meet the conditions set out in Option 1, other than the requirement regarding independent supervision.

For consideration of alternative assessment arrangements under Option 3, contact [CourseProvider@tpb.gov.au](mailto:CourseProvider@tpb.gov.au) and ensure that your email includes the following information:

- Outline of alternative assessment arrangement.
- Details of how the alternative assessment arrangement meets the conditions set out in Option 1 (other than the requirement regarding independent supervision).
- Numbers of students impacted or expected to be impacted.
- Any other relevant information.

The TPB will consider submissions as a matter of priority and notify you of the outcome as soon as possible.

## FASEA Policy Update: Invigilated Exams interruptions due to Corona Virus

Please see below media release from the Financial Adviser Standards and Ethics Authority Ltd

17 March 2020

FASEA policy requires that examinations be invigilated and due to the Corona Virus impact we have reviewed this policy. In the case where examinations cannot be conducted as per usual HEP practice the following guidance is provided for all Higher Education Providers offering FASEA approved courses/units.

1. FASEA will allow alternative assessment for the invigilated examination under the following conditions:
  - The alternative assessment assesses the same learning outcomes as the invigilated examination
  - Alternative assessments meet TEQSA guidelines
  - HEPs maintain records of all individuals completing the alternative assessment
  - The alternative assessment has the same weighting as the invigilated examination
2. FASEA encourages the use of the variety of assessment alternatives available and use of remote proctoring if the HEP has these facilities available within TEQSA guidelines.

Please note this arrangement will be reviewed and HEPs informed of any policy changes. These arrangements are in place for current semester/trimester.

Please note this policy relates to accredited programs only and does not apply to the financial adviser examination.

If you have any questions please contact Howard Cook on:

E: [howard.cook@fasesa.gov.au](mailto:howard.cook@fasesa.gov.au)

M: 0423 047 590

*Howard Cook*

Accreditation Manager

## 06 | TAX SPECIAL INTEREST GROUP AT AFAANZ CONFERENCE

I am writing to inform you of a new Special Interest Group (SIG) that we are developing and expect to host at the next Accounting and Finance Association of Australia and New Zealand (AFAANZ) conference, the Tax SIG. The Tax SIG is tasked with developing a supportive and productive environment for tax academics in Australia and New Zealand who are engaged in, or wish to engage in tax research and/or teaching. The Tax SIG will aim to encourage research and education in tax and foster relationships with industry to improve and contemporise academic contributions. This will be achieved through keynote presentations from leading tax academics and practitioners, panel sessions, research presentations and networking opportunities. Members may include those with interests in all areas of taxation including:

- tax policy;
- tax compliance and morale;
- taxation of individuals;
- taxation of structures;
- international tax;
- capital gains tax;
- taxation of superannuation; and
- indirect taxes.

As we are planning to host the inaugural Tax SIG at the AFAANZ Conference in Melbourne in 2020, I would appreciate your kind cooperation and help in recruiting twenty interested participants (who are also members of AFAANZ) to establish a quorum. To register your interest, or to obtain any additional information, please contact the SIG organiser at: [bronwyn.mccredie@qut.edu.au](mailto:bronwyn.mccredie@qut.edu.au).

I look forward to working with you to establish this valuable group and resource.

Thank you and kind regards,

*Bronwyn McCredie*

## 07 | ARRIVALS, DEPARTURES AND HONOURS



### Welcome and Farewell

Micheal Blissenden, after nearly 20 years, has left Western Sydney University and is now working on Taxation Law units at the University of New England. He is also working with the UNSW Law School on the Practical Legal Training course, which commenced this year.



### Congratulations

Professor Neil Warren was made an Emeritus Professor at the Taxation & Business Law Department, UNSW Sydney.

## 08 | TAX LAW DEVELOPMENTS

### Australia

#### High Court of Australia

[\*Commissioner of State Revenue v Rojoda Pty Ltd\* \[2020\] HCA 7](#)

Bell, Gageler, Keane, Nettle and Edelman JJ – 18 March 2020

##### Catchwords:

- Stamp duties – Declaration of trust – Partnership – Dissolution – Partnership assets – Nature of partners’ rights in relation to partnership assets – Where freehold titles to land held by two partners as joint tenants – Where other partners not registered title holders – Where partnerships dissolved but not wound up upon death of one partner holding titles – Where surviving partner declared trusts over freehold titles for benefit of other partners in proportion to partnership interests – Where Commissioner assessed declaration of trust as “dutiable transaction” within meaning of *Duties Act 2008* (WA), s 11(1) – Whether partner holding freehold titles trustee for other partners – Whether declaration of trust by surviving partner holding freehold titles created new interests in land – Whether declaration of trust dutiable transaction.
- Words and phrases – “beneficial interest”, “conveyance”, “declaration of trust”, “dissolution”, “dutiable transaction”, “equitable interest”, “non-specific interest”, “partners’ interest”, “partnership property”, “right to account and distribution”, “transfer”, “trust for partnership”, “winding up”.

##### Order

1. Appeal allowed with costs
2. Set aside the orders of the Court of Appeal of the Supreme Court of Western Australia made on 21 December 2018 and in their place order that the appeal be dismissed with costs.

#### Federal Court of Australia

[\*Zaghloul v Commissioner of Taxation\* \[2020\] FCA 469](#)

Colvin J – 8 April 2020

##### Catchwords:

- Taxation - appeal from decision of the Administrative Appeals Tribunal affirming Commissioner of Taxation’s decision to disallow applicant’s objection against income tax assessment - where applicant’s employer made lump sum payment to applicant - where Tribunal found lump sum payment was back payment for period when applicant’s employer failed to make weekly payments for total incapacity - where Workers’ Compensation and Injury Management Act 1981 (Cth) provides for an election to receive compensation as a lump sum payment in certain limited circumstances - whether applicant should be treated as if he made election - whether lump sum payment should be treated as an Employment Termination Payment - whether lump sum payment should be treated as income earned in previous years

##### The court orders that:

1. Appeal dismissed.
2. The applicant pay the respondent’s costs of the appeal.

[\*Alstom Transport Australia Pty Ltd v Comptroller-General of Customs\* \[2020\] FCAFC 43](#)

Davies, Markovic and Steward JJ – 17 March 2020

##### Catchwords:

- Taxation – customs and excise – tariff concession order (“TCO”) – core criteria – substitutable goods – appeal from decision of the Administrative Appeals Tribunal – where TCO application made in respect of unattended trains to be incorporated into the Sydney Metro Train Network was refused – whether Tribunal erred in applying ss. 269B and 269C of the *Customs Act 1901* (Cth) – whether Tribunal erred in finding that particular trains produced in Australia are “substitutable goods” in respect of the applicant’s trains – whether Tribunal misunderstood its statutory task and failed to make necessary findings of fact – whether Tribunal failed to make findings with respect to the uses to which the particular trains described in the TCO application and the putative “substitutable goods” can be put – whether Tribunal addressed the question of use at an impermissible level of generality

##### The court orders that:

1. The appeal be allowed.
2. The decision of the Administrative Appeals Tribunal dated 17 June 2019 be set aside.
3. The matter be remitted to the Tribunal for re-determination according to law.
4. The respondent pay the applicant’s costs of and incidental to this appeal, to be taxed in default of agreement.



*BAC Holdings Limited v Commissioner of Taxation [2020] FCA 413*

Logan J – 31 March 2020

## Catchwords:

- Taxation - income tax - where the applicant received approval to construct a new parallel runway (NPR) - where the applicant applied to the Commissioner under the Taxation Administration Act 1953 (Cth) (TAA) for a private ruling as to whether certain initial activities associated with the construction of the NPR were themselves a “project” for the purposes of subdivision 40-I of the Income Tax Assessment Act 1997 (Cth) – whether the two phases of construction of the NPR comprise discrete “projects” or whether the construction of the NPR was but one “project”
- Practice and procedure – where the private ruling was sought in respect of income years including 2011 to 2017 for which assessments had been made and issued (assessment income years) – whether the appeal was competent in the absence of the exclusion of the assessment income years in the notice of appeal – where this ground of objection to competency does not go to all bases upon which the applicant has sought to invoke the court’s jurisdiction – whether the objection to competency is itself incompetent – whether the appeal was otherwise incompetent on the ground that the applicant was not a person “dissatisfied” with the objection decision, in terms of s 14ZZ(1)(a)(ii) of the TAA, as the scheme ruled on the in the private ruling was not implemented and never could be implemented in the terms described – whether there is a “matter” capable of the valid exercise of Commonwealth judicial power

The court orders that:

1. The appeal be allowed.
2. The decision of the Administrative Appeals Tribunal dated 17 June 2019 be set aside.
3. The matter be remitted to the Tribunal for re-determination according to law.
4. The respondent pay the applicant’s costs of and incidental to this appeal, to be taxed in default of agreement.

*Colin Fong**New Zealand*

The omnibus *COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020* (NZ) aims to promote Government’s response to the economic impacts of the COVID-19 outbreak, including targeted relief measures. The key provisions of the Act are:

- The reintroduction of depreciation on commercial buildings which:
  - Is effective from 1 April 2020.
  - Excludes residential buildings.
  - Applies a rate of 2% for the diminishing value method, and 1.5% for the straight line method.
- The provisional tax threshold is increased to NZD5,000 residual income tax (from NZD2,500).
- Up-front deduction of low value assets threshold is temporarily increased from NZD500 to NZD5,000 (17 March 2020 – 16 March 2021) and permanently increased to NZD1,000 (from 17 March 2021).
- Research & Development Tax Credit refundability, which was due to start in 2020-21, has been brought forward to 2019-20 tax year.
- IRD may grant Use of Money Interest relief to businesses affected by Covid-19, on request.
- IRD is permitted to share information with other government departments to assist business and individuals affected by Covid-19. Only information relating to Covid-19 relief may be shared under this provision.
- Working families, which experience a reduction in working hours as a result of COVID-19, will not lose their eligibility for the In-Work Tax Credit (from 1 July 2020). This is a permanent change.
- Working for families tax credit entitlement for emergency benefit recipients has been extended to taxpayers who are not permanent residents.
- Order in Council (the Goods and Services Tax (Grants and Subsidies) Amendment Order 2020, which added the COVID-19 wage subsidy and leave payment to the list of non-taxable supplies, came into force on 24 March 2020, without retroactive effect. Since payments started on 17 March 2020, the Act provides that payments made in the interim are not taxable.

The Bill received Royal Assent on 25 March 2020.

*Jonathan Barrett*

## 09 | BULLETIN BOARD

### *JATTA Notice*

Please remember that submissions are still open for the 2020 edition of JATTA. We have extended the final submission date until the end of June, so please consider submitting an article for publication. The journal publishes on a diverse range of tax topics – and the article does not need to have been presented at the conference this year.

Please email your submission to John McLaren at: [john.mclaren@utas.edu.au](mailto:john.mclaren@utas.edu.au)

### *Forum for Tax Questions*

If you want to raise to the ATTA group a question about tax (such as the interpretation of a case or legislation) then why don't you use the [ATTA LinkedIn Group](#) page. If you are not already a member just do a 'request to join'.

*Brett Freudenberg*  
Griffith Business School

### *Electric Vehicle Owners in Queensland*

Griffith University in collaboration Queensland Government, Transport and Main Roads and Energy Queensland are surveying "Early Adopters of Electric Vehicles". We want to know your experience in charging, driving and how your views on policy incentives may encourage other consumers to purchase an electric vehicle in Australia. With your help, we hope to gain insight into these areas.

Thank you for your support and contribution (Griffith University Ethical Clearance Ref No: 2019/1031).  
[Click here to contribute your valuable thoughts and information to our research.](#)

### *Free access to scholarly materials*

A list of publishers offering free access to scholarly materials in response to COVID-19 can be found here: [ANU Website](#).

Thanks to Christine Peacock for pointing out the above.

### *NTEU: Big win against benchmarks!*

I'm writing to let you know about the NTEU's big win on the issue of research performance benchmarks for academics.

On March 11 the NTEU won an unfair dismissal case for a member at UTS who was sacked for unsatisfactory performance of the basis of failing to publish in A or A\* ranked journals. The Fair Work Commission found the dismissal to be 'harsh and unreasonable'. The Commission ordered that our member be reinstated and paid back the salary they lost after dismissal.

FWC Deputy President Sams noted 'universities can become ruthlessly competitive, if not obsessed, with achieving top research rankings and reputation in order to attract students ('code' for income) which, to my mind, may tend to distract from the focus of providing a quality learning experience for students'.

He also noted that 'A university, of all society's institutions, should have the flexibility to accommodate an academic's personal and professional qualities and attributes, and maximise a particular individual's interests and talents to enhance the best outcomes of the common good.'

It is hoped that this victory will have far reaching implications throughout the university sector. It pushes against the tide of unrealistic performance benchmarks and punitive management cultures that increasingly govern academic work.

The NTEU will continue to campaign for academic freedom and for the rights of our members.

You can help us do this by forwarding this email to one of your academic colleagues and asking them to join the NTEU.

We are, as always, stronger together.

In union,  
*Damien Cahill*  
NTEU NSW Division Assistant Secretary

The above was received by the ATTA News Editor on 27 March 2020.

The case is [Dr Ruoyun \(Lucy\) Zhao v University of Technology Sydney \[2020\] FWC 416](#).

## *Doctoral Program in International Business Taxation receives doc.funds of the Austrian Science Fund*

We are proud to announce that WU's Doctoral Program in International Business Taxation (DIBT) is one of only four programs chosen this year to receive the coveted doc.funds of the Austrian Science Fund (FWF), which will provide additional funding for the program for another four years.

DIBT is a highly successful doctoral program, focusing on one of WU's core research areas, international taxation. It was launched in 2011 with the help of FWF's DK (Doctoral Program) funding, and has since been established as a regular doctoral program at WU, providing high-quality interdisciplinary training for graduates in the field of international taxation, including and combining the disciplines of public finance, international tax law and cross border tax management. The three-year full-time program is held entirely in English and therefore attracts a correspondingly international collegiate. DIBT graduates have gone on to start promising careers, many of them securing positions in academia, others at national and international research centers, multinational organizations, or in the private sector.

DIBT students write their doctoral thesis in their own discipline (law, business, public finance, economic psychology), while being exposed to intensive interdisciplinary discussions during their stay in Vienna. During the first year, students are required to attend many comprehensive courses to provide the basic knowledge necessary for interdisciplinary working. The second and the third years are dedicated to seminars offering different perspectives on taxation, a research stay abroad, additional optional workshops, and especially to research on the thesis. Throughout the three years, a research seminar supplements the students' training.

DIBT guarantees the best possible standards in both research and teaching through its faculty of renowned scholars. The core faculty of the program is made up of an interdisciplinary team of WU professors, including Eva Eberhartinger, Michael Lang, Zoltán Novotny-Farkas, Pasquale Pistone, Alexander Rust, Rupert Sausgruber and Martin Zagler. They are supported by guest professors Erich Kirchler, Dominika Langenmayr, Caren Sureth-Sloane und Alfons Weichenrieder. Additionally, many visiting professors, who are internationally recognized leading experts in their fields, contribute to the DIBT with their expertise, and form an integral part of the doctoral program, thereby completing the top-level academic education offered to the students.

Please find the relevant press releases on the [WU Website](#) and [FWF Website](#).

For more information about the DIBT Program, please see [www.wu.ac.at/dibt](http://www.wu.ac.at/dibt).

*Eva Eberhartinger, Michael Lang and Martin Zagler*

## *Do you have a Bulletin Board item?*

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

## 10 | ATTA PEOPLE IN THE MEDIA

*Robert Deutsch*

- Khadem, Nassim '[Thousands of Australian expats face tax slug under changes to CGT main residence exemption](#)' ABC News, 2 January 2020
- Goncalves, Pedro '[Australian expats face hefty taxes after capital gains tax exemption is scrapped](#)' International Investment News, 3 January 2020
- Macken, Lucy 'Expats caught by capital gains law' Sydney Morning Herald 15-16 February 2020 p 4
- Macken, Lucy '[Australian expats list their homes to beat looming changes to capital gains tax](#)' Domain media, 15 February 2020
- Khadem, Nassim '[Working from home because of coronavirus? The ATO's new tax 'shortcut' may leave you paying more](#)' ABC News, 8 April 2020





## 11 | IFA COMPETITIONS 2020

The IFA Australian branch calls for submissions from the Young scholars among us (under the age of 40, or 35) for the following IFA Prizes/Awards for 2020. The deadline for submissions has been extended to 31 May due to COVID-19.

<i>Maurice Lauré Prize</i>	<i>IFA President YIN Scientific Award</i>	<i>Mitchell B. Carroll Prize</i>
<p>IFA has instituted a Prize in order to encourage scientific work on international indirect taxation. The Prize is named in honour of Maurice Lauré, who was instrumental in the first implementation of the Value Added Tax system, now applied in more than 160 jurisdictions.</p> <p><b>Subject:</b> International indirect fiscal law, comparative indirect tax law, or local indirect tax law having an important relation with fiscal law in foreign jurisdictions.</p> <p><b>Prize:</b> 5,000 Euros, plus a medal and an invitation to attend the IFA 2020 Congress in Cancun, exempted from the payment of the Congress registration fee, during which the Prize is awarded.</p> <p><b>Requirements, conditions and deadlines:</b> <a href="#">IFA website here</a></p>	<p>The IFA President YIN Scientific Award was launched in 2014. This Award shall be awarded for an article published in a qualified medium, furthering the understanding of international fiscal law or comparative tax law, providing practical solutions to problems arising in cross-border transactions or situations.</p> <p><b>Subject:</b> Any topic furthering the understanding of international fiscal law or comparative tax law, providing practical solutions to problems arising in cross-border transactions or situations.</p> <p><b>Prize:</b> 1,000 Euros, plus a memento, a certificate and an invitation to attend the IFA 2020 Congress in Cancun, exempted from the payment of the Congress registration fee, during which the Prize is awarded.</p> <p><b>Requirements, conditions and deadlines:</b> <a href="#">IFA website here</a></p>	<p>In order to encourage scientific work, the IFA has instituted a Prize as a tribute to its first Honorary President, Mitchell B. Carroll. This Prize is awarded for a work dealing with international fiscal questions, comparative fiscal law or local fiscal law with the emphasis on the relationships with the fiscal law of foreign jurisdictions.</p> <p><b>Subject:</b> International fiscal law, comparative tax law, or local tax law having an important relation with fiscal law in foreign jurisdictions.</p> <p><b>Prize:</b> 5,000 Euros, plus a medal and an invitation to attend the IFA 2020 Congress in Cancun, exempted from the payment of the Congress registration fee, during which the Prize is awarded.</p> <p><b>Requirements, conditions and deadlines:</b> <a href="#">IFA website here</a></p>

## 12 | CALL FOR SUBMISSIONS

### International Journal of Business and Social Science

[Volume 11 | Issue 5](#)

**Ranking:** Unknown - USA

**Manuscripts Submission Deadline:** 30 April 2020

**Publication Date:** 31 May 2020

*Frank Tian Xie*

### Journal of the Australasian Tax Teachers Association

[Volume 15 | Issue 1](#)

**Ranking:** B

**Manuscripts Submission Deadline:** 30 June 2020

**Publication Date:** November/December 2020

*John McLaren*

### Australian Tax Review

[Special Issue: Current Topics in International Taxation](#)

**Ranking:** A

**Manuscripts Submission Deadline:** 15 June 2020

**Publication Date:** November/December 2020

*Anthony Ting, Kerrie Sadiq and Dale Pinto*

### Austaxpolicy.com Blog (Tax and Transfer Policy Institute)

[TTPI Working Papers and Policy Briefs](#)

**Ranking:** N/A

**Manuscripts Submission Deadline:** Continually

**Publication Date:** Continually

*tax.policy@anu.edu.au*

## 13 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages.

### Domestic

#### The Conversation

ATTA Member contribution(s)

- *Miranda Stewart* was a signatory to - Peter Whiteford, '[Open letter to the prime minister: extend coronavirus support to temporary workers](#)', 7 April 2020

Articles of Interest

- *Robert Breunig and Tristram Sainsbury* - '[The government opens a coronavirus super loophole: it's legal to put your money in, take it out, and save on tax](#)', 1 April 2020

#### Tax Specialist

[2020 | Volume 23 | Issue 3](#)

Articles of Interest

- *Shaun Cartoon* - Employee share schemes and corporate transactions
- *Cullen Smythe* - NSW "just and reasonable" exemption: Analysis and practical application
- *Louisa Wu* - Will the covered sovereign entity please stand up?
- *Brendan Brown* - New Zealand's anti-hybrid rules: Do you have an issue?

#### Tax and Transfer Policy Institute

[Aust taxpolicy.com Blog](#)

ATTA Member contribution(s)

- *Alison Pavlovich* - [How NZ Tax Working Group Recommendations Differs From Previous Reviews? The Influence of the Living Standards Framework and Māori Principles](#), 16 March 2020
- *Jonathan Barrett and Kathleen Makale* - [The Tax Working Group and the Circular Economy: Context and Challenges](#), 26 March 2020

Articles of Interest

- *Peter Whiteford and Bruce Bradbury* - When It Comes to Sick Leave, We're Not Much Better Prepared for Coronavirus Than the US, 12 March 2020
- *Matthew Scobie and Tyron Love* - Māori Perspectives in the New Zealand Tax Working Group Report: Tikanga or Tokenistic Gestures?, 19 March 2020
- *Peter Whiteford and Bruce Bradbury* - Coronavirus Supplement: Your Guide to the Australian Payments That Will Go to the Extra Million on Welfare, 29 March 2020
- *Andrew Podger and Michael Keating* - Retirement Income Review: Focus More on Secure Retirement Income Streams, and Settle the Adequacy Debate, 1 April 2020

#### Taxation in Australia

[2019 | Volume 54 | Issue 6](#)

ATTA Member contribution(s)

- *Michael Blissenden and Paul Kenny* - Residence tests for individuals: Impact of the Harding decision

Other Articles

- November - what happened in tax?
- *Tim Neilson* - Not goodbye, but reflection and thanks
- *Giles Hurst* - Another eventful year at The Tax Institute
- *Angie Ananda* - Trade-offs and the federal Budget
- Vacant land deductions
- *Daryl Jones* - Testamentary trusts: Reforms at a trickle
- *Ben Wilson and Caitlin Ashworth* - Deceased estates, real property and real issues
- *William Calokerinos* - Reliability of evidence in tax disputes
- *Sam Campbell* - TD 2019/D6 and TD 2019/D7: (Further) unintended consequences?
- *Daniel Butler & Bryce Figot* - NALI warning: LCR 2019/D3
- *Michael Norbury* - Is it a capital or an income expense?
- *Peter Collins* - Glencore v FCT: Transfer pricing decision

#### Taxation in Australia

[2020 | Volume 54 | Issue 7](#)

ATTA Member contribution(s)

- *Chloe Burnett* - International tax: "Pillars" of strength or ruins in the making?

Other Articles

- December - what happened in tax?
- *Giles Hurst* - The best is yet to come
- *Bruce Quigley* - Tax reform can't wait
- Active asset test
- *Suzie Boulous* - How The Tax Institute propelled a partner's career
- *Nathan de Zilva* - Reconsidering the Commissioner's remedial power
- *Matthew Burgess* - Tax and estate planning in 2020: What has changed?
- *Laura Spencer* - Trusts and the franking credits trap: Can we fix it?
- *Daniel Butler* - When SMSF advice is unlawful
- *Michael Norbury* - Pavihi: The helpful bank teller
- *Vanessa Crosland and Teya Stoyanova* - Significant global entities
- *Katerina Peiros* - Family law asset protection of a testamentary trust

## International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

### The Conversation

#### Articles of Interest

- *Andrew Bauer* - [‘Put your trust in taxes during the coronavirus pandemic recovery’](#), 5 April 2020
  - Looked at the Canadian federal government’s COVID-19 Economic Response Plan which includes tax-related measures.

### Canadian Tax Journal

[2020 | Volume 68 | Issue 1](#)

#### ATTA Member contribution(s)

- *Celeste M Black* - The Future of Work: The Gig Economy and Pressures on the Tax System
- *Michael Dirkis* - Moving to a More “Certain” Test for Tax Residence in Australia: Lessons for Canada?

#### Other Articles

##### Peer reviewed articles

- *Alessandro Zeli* - The Evaluation of Job Tax Incentives: An Analysis of a Regional Tax

##### Policy forum

- *Kevin Milligan* - Editor’s Introduction—Taxes and Spending in Canada’s 43rd Parliament
- *Sean Speer* - Tax Reform in Canada’s 43rd Parliament—Politics, Policy, and Second-Best Choices
- *Rob Gillezeau and Trevor Tombe* - Expenditures, Efficiency, and Distribution—Advice for Canada’s 43rd Parliament

##### Symposium

- *Jinyan Li, Arjin Choi and Cameron Smith* - Automation and Workers: Re-Imagining the Income Tax for the Digital Age
- *Kim Brooks* - Tim Edgar: The Accidental Comparatist

##### Awards

- Douglas J. Sherbaniuk Distinguished Writing Award
- Canadian Tax Foundation Regional Student-Paper Awards
- Best Newsletter Article by a Young Practitioner Award
- Canadian Tax Foundation Lifetime Contribution Award

##### Features

- *David Lin* - Finances of the Nation: Survey of Provincial and Territorial Budgets, 2019-20
- *Brian Studniberg, Maressa Singh, Michael Templeton, and Joel Nitikman* - Current Cases: (FCA) *Tedesco v. Canada*; (TCC)  *eyeball Networks Inc. v. The Queen*; (UKUT) (TCC) *Irish Bank Resolution Corporation Ltd (in Special Liquidation) and Irish Nationwide Building Society v. Revenue and Customs*
- *Wayne D. Gray* - Personal Tax Planning: Due Diligence Defence to Liability for Unpaid Statutory Remittances
- *Brian R. Carr, Brittany Finn, and Ryan Wolfe* - Corporate Tax Planning: GAAR: An Economic Test?—The Courts Divide
- *Alan Macnaughton and Jinyan Li* - Current Tax Reading

### British Tax Review

2020 | Issue 1

- *The Editors* - Memories of David Oliver (JDBO)

#### Current Notes

- *Richard Asquith* - The gig and sharing economies: millions of new entrepreneurs; billions in lost VAT
- *Charlène Herbain* - VAT: quick fixes 2020

#### Case Notes

- *Timothy Lyons* - Starbucks and Fiat Chrysler: is the European Commission defending national tax regimes?
- *Andrew Harper* - *Foojit Ltd v HMRC*: EIS preference share dividends—purposeful construction of a closely-articulated statute
- *Stuart Pibworth* - *N Luxembourg 1 and others v Skatteministeriet*: beneficial ownership and abuse of rights under the EU Interest and Royalties Directive

#### Articles

- *Rhoda Brown and Lynne Oats* - Accounting Profits, Tax Profits and Unitary Taxation (Revisited)
- *Daisy Ogembo and Vili Lehdonvirta* - Taxing Earnings from the Platform Economy: An EU Digital Single Window for Income Data?
- *Gerald Montagu* - Ardmore: Some Reflections on the “Practical Approach” to Identifying the Source of an Interest Payment

#### Book Reviews

- *Stephen Daly* - Selectivity in State Aid Law and the Methods for the Allocation of the Corporate Tax Base (Kluwer Law International, 2018), by J. Monsenego
- *Christiana HJI Panayi* - Transfer Pricing and Intangibles (Linde, 2019), by M. Lang, A. Storck, R. Petrucci and R. Risse (eds)

## 14 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

<p><b>Annual Tax Research Symposium</b></p> <p>Normally organised by Griffith University, and held in July, will not run in 2020 because of the COVID-19 pandemic.</p>	<p><b>ANU/Crawford School/TTPI Events</b></p> <p>As a precautionary measure and based upon advice from an ANU expert panel, all public and social events at <a href="#">ANU including Crawford School</a> have been cancelled until the end of semester one. This includes events organised by the <a href="#">Tax and Transfer Policy Institute (TTPI)</a>.</p>	<p><b>2021 ATTA Conference</b></p> <p>More information on page 2 of this edition of ATTA News.</p>
<p><a href="#">The Tax Institute</a></p>	<p><a href="#">Law Council of Australia</a></p>	<p><a href="#">Australian Conference Alerts</a></p>

### International

Various international events happening in the foreseeable future are listed below.

<p><a href="#">5th International Taxpayer Rights Conference</a></p> <p><b>Date:</b> 30 September - 1 October 2020  <b>Location:</b> Pretoria, South Africa  <b>Cost:</b> USD\$325  <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries</p>	<p>See the below organisations for additional international conferences and events to those showcased to the left.</p>	
<p><a href="#">Canadian Tax Foundation</a></p>	<p><a href="#">Institute for Fiscal Studies</a></p>	<p><a href="#">Institute for Austrian and International Tax Law</a></p>
<p><a href="#">International Bureau of Fiscal Documentation</a></p>	<p><a href="#">International Fiscal Association</a></p>	<p><a href="#">International Tax Planning Association</a></p>
<p><a href="#">International Bar Association</a></p>	<p><a href="#">International Events and Law Conferences</a></p>	<p><a href="#">Practising Law Institute</a></p>
<p><a href="#">American Bar Association</a></p>	<p><a href="#">New York Bar Association</a></p>	<p><a href="#">Hieros Gamos Worldwide Law Events</a></p>

## 15 | QUOTABLE QUOTES

“Employees across the country are now working from home as the coronavirus pandemic rages on – but it could have serious implications at tax time.

Spending the work day at home instead of the office will be leaving many of us out of pocket, as we rely on home and mobile phones for work calls, use our own power and rack up other work-related expenses.

The good news is, you can claim a deduction at tax time – but it also comes with an important warning.

An ATO spokeswoman told news.com.au it was an unprecedented situation for many. “The ATO understands that family and community are most important right now, and that in response to COVID-19, many people may be working from home for the first time,” the spokeswoman said.

“In you are an employee who is working from home, you may be able to claim a deduction for expenses relating to that work.”

This may include deductions for the work-related portion of running expenses, such as lighting, cleaning, heating and cooling costs, as well as p hone and internet expenses.

To claim, you will need to have paid for those costs yourself – and not been reimbursed by your employer – and have records to support your claims.”

*Alexis Carey*

Read more here: [News.com.au](https://www.news.com.au)

“Tax reform including a GST increase and higher land tax will be needed to avoid the debt burden of the \$214bn Covid-19 economic response falling on young people, an academic tax expert has warned.

Prof Robert Breunig, who leads the Australian National University’s tax and transfer policy institute, has warned Australia’s overreliance on income and corporations tax will see the bill “fall very heavily on the future incomes of young people, which will now be lower as a consequence of the pandemic”. [...]

But Breunig said Australia’s tax system was “antiquated and not well set up to encourage growth in the economy” because it relies on company and income tax which “have a negative impact on growth”.

Breunig told Guardian Australia the tax system has “generated inequality between young people” – who pay income tax and GST – and older people who have experienced “a huge run-up in their wealth” from buying houses and benefit from “tax-free income from their superannuation”.

Fiscal stimulus and lower interest rates to combat economic crises “pump money into the economy” in a way that drives up asset prices such as shares and real estate, exacerbating wealth inequality.

Breunig supports increasing the GST because it “has the extra benefit of taxing people’s accumulated wealth as they spend it”.

“We should also switch from stamp duty to land tax to better capture the value of increased asset prices and make it easier for people to buy and sell houses,” he said.

“Another option is to include owner-occupied housing in the asset test for the age pension and introduce a government-run reverse-mortgage program to help people to spend their assets while alive.”

Asked about the stage two and three income tax cuts, legislated in mid-2019 after the re-election of the Morrison government, Breunig warned the government “may have to delay them if it can’t replace the revenue from other sources”.

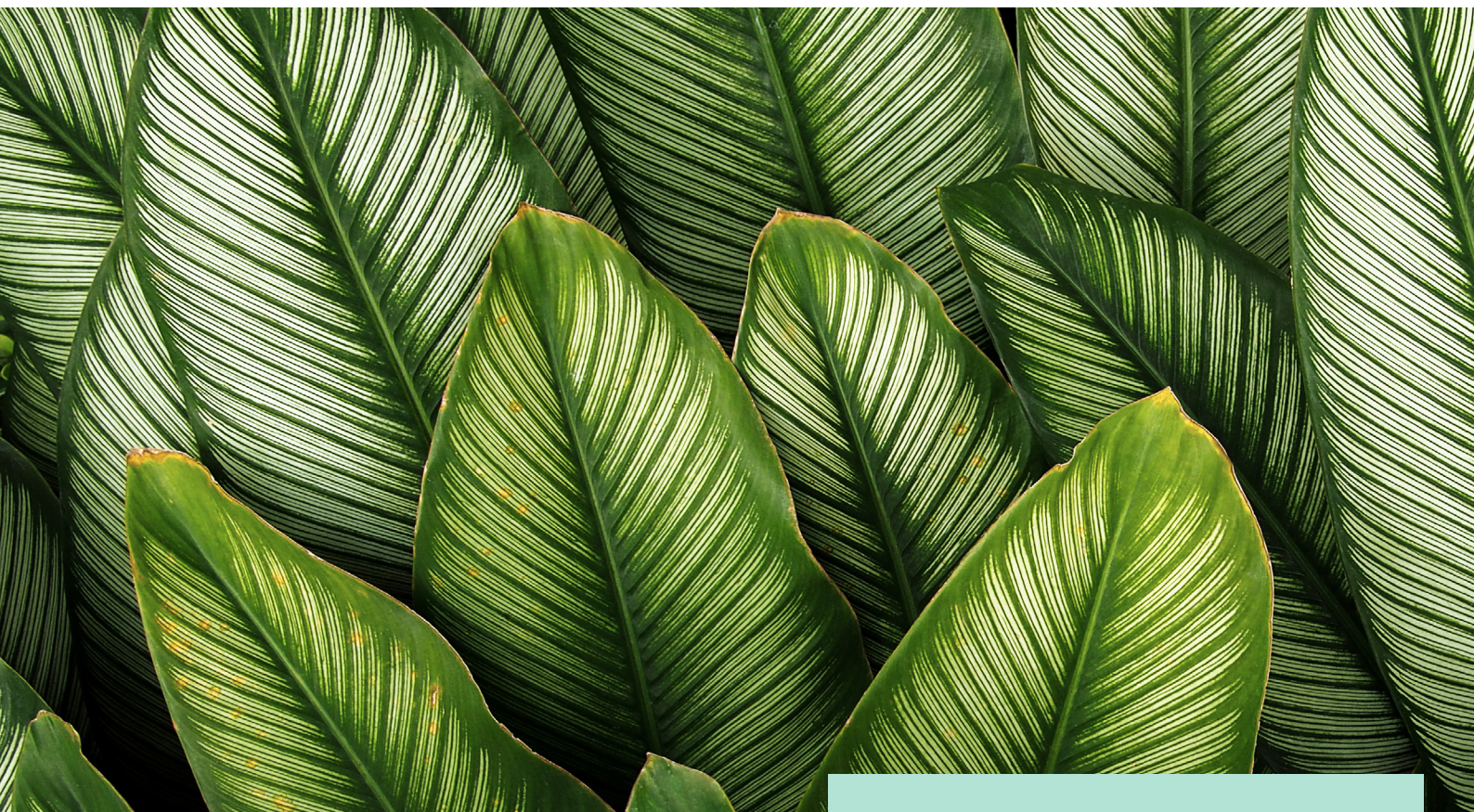
*Paul Karp*

Read more here: [The Guardian website](https://www.theguardian.com)

“It was a far cry from the days when the young Renoir munched the sweets tossed down by Queen Amelie in the courtyard of the Louvre to the days when his son sat at the wheel of a car, speeding along the roads of southern France. By the time my father died the industrial revolution was an established fact. Man had begun to believe that he could carry out this first serious attempt to escape from God’s Curse. The children of Adam were going to force the gates of the Garden of Eden, and science would enable them to earn their bread without toiling by their brow.”

Source: Renoir, Jean Renoir, my father, The Reprint Society, London, 1964, by arrangement with Wm. Collins Sons & Co. Ltd., London, 1962., pg 25





## ISSUE HIGHLIGHTS

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“Taxation is the price which civilized communities pay for the opportunity of remaining civilized.”

- *Albert Bushnell Hart*

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## 01 | PRESIDENTIAL COLUMN

### President's Note

Hello and welcome to the May ATTA Newsletter.

This column is written from my dining room table as we move into week seven of NZ lockdown. This month we welcome Supriya Eliezer who has joined Colin Fong in the role of Assistant Editor of the ATTA News.

It is hard to keep up with all the additional tax funded expenditure and initiatives in New Zealand. I'm sure Australia is the same. To name just a few since my last column, we have one-year interest free loans up to \$100,000 for NZ small businesses impacted by COVID-19; a temporary loss carry-back scheme; relief measures introduced relating to the insolvency trading laws, including the temporary safe harbour protection and business debt hibernation; financial support for regional businesses; and remission of interest and penalties on late payment of tax. This is all prior to the budget, due

to be announced on 14 May, which is being referred to as a "recovery budget". There is certainly no shortage of tax innovation and policy changes to inform or motivate our research.

Congratulations to Ian Murray on his promotion as Associate Professor at the University of Western Australia and to Keith Kendall on his appointments as the full-time Chair of the Australian Accounting Standards Board, as a part-time member of the Financial Reporting Council and a member of the NZ Accounting Standards Board. See item 3 for more details.

While it is encouraging to see the proposal of a trans-Tasman bubble, of course, our ATTA community extends across the globe. I hope you and your families and friends are keeping well and safe wherever in the world you are located.



All the best,

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

The 33<sup>rd</sup> Annual ATTA conference will be hosted by the University of Canterbury (UC) Business School at the UC from 20 to 22 January 2021 in Christchurch, New Zealand. It will be held at Rydges Latimer in the Christchurch CBD, rather than at the UC. Bookings for a limited number of discounted rooms can be made direct to [Rydges Latimer here](#).

The welcome reception will be held at the International Antarctic Centre near Christchurch International Airport, with the conference dinner at the Great Hall at the Arts Centre in the CBD (part of UC's campus before it moved out of the city during the 1960-70s). A farewell BBQ will be held at Rydges Latimer at the conclusion of the conference.

**The theme is - The Future of Tax: More than Just Politics?**

***Due to COVID-19 we are monitoring the impact this may have on hosting the conference in Christchurch in 2021. We will provide further updates as we know more.***

More details will follow over the coming months.

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Robert Vosslander ([rob.vosslander@canterbury.ac.nz](mailto:rob.vosslander@canterbury.ac.nz))

Shelley Griffiths ([shelley.griffiths@otago.ac.nz](mailto:shelley.griffiths@otago.ac.nz))

### 03 | ARRIVALS, DEPARTURES AND HONOURS

#### Welcome and Farewell



Jagdeep Singh-Ladhar is currently a Lecturer in Taxation at Auckland Business School, University of Auckland. Prior to that she was an Assistant Lecturer and Teaching Fellow at the Waikato Management School, University of Waikato. During her time at Waikato she was involved in teaching the core law course on sustainability, ethics and the legal system. From 2013, she was the primary lecturer for the taxation course. Jagdeep is a qualified Barrister and Solicitor of the High Court of New Zealand. She has published in the *eJournal of Tax Research* and *New Zealand Journal of Taxation Law and Policy*. She also has chapters in the *Law of Marketing*, *Foundations of New Zealand Taxation Law*, and her own forthcoming text on New Zealand Water Allocation Law. Her research interests focus on the nexus between tax and sustainability.

#### Congratulations



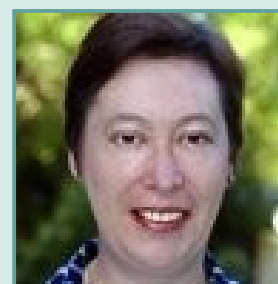
Rosheen Garnon was appointed as the new permanent Chair of the Board of Taxation on 31 March 2020. Rosheen was a former national partner of KPMG’s Australian taxation division.

Congratulations to Ian Murray on his promotion as Associate Professor at the University of Western Australia at the end of 2019.



The Australian federal government has appointed Dr Keith Kendall as the full-time Chair of the Australian Accounting Standards Board (AASB) for a five-year period from 3 May 2020, as a part-time member of the Financial Reporting Council (FRC) for a five-year period commencing from the date of his appointment to the AASB and a member of the NZ Accounting Standards Board. See [Assistant Treasurer’s Press Release](#).

Sally Joseph is now Production Editor for the Australian Tax Forum, with the printing still done by the Tax Institute.



### 04 | ATTA PEOPLE IN THE MEDIA

#### Robert Deutsch

- Khadem, Nassim [‘Australia doesn’t have a death tax, but someone has to pay your bills after you die’](#) ABC News, 9 December 2019
- Hughes, Duncan [‘Expat CGT deadline enforced’](#) *AFR Weekend – Australian Financial Review* 9-10 May 2020 p 29





## 05 | ALTERNATE ASSESSMENT GUIDANCE: COVID-19

### Tax Practitioners Board

#### Exam requirements for Board approved courses

- The TPB requires that at least 40% of the total assessment for a Board approved course be completed under some form of independent supervision. This requires assessments to be conducted under the supervision of an invigilator.
- Due to the recent impact of COVID-19, the TPB has reviewed this policy. In cases where supervised assessments cannot be conducted in line with the TPB's existing requirements, the following guidance is provided to all approved course providers.
- These arrangements will remain in place at least for the current study period (semester/trimester).
- The TPB will continue to monitor the situation and approved course providers will be notified of any policy changes should they occur. In particular, the policy will be updated to reflect any alternative arrangements approved by the Board under Option 3.
- This policy applies to all current Board approved courses. As appropriate, the TPB will update its proposed guidelines on Board approved courses to reflect this policy.

#### Option 1

Where possible and practicable, the TPB's preferred option is for an alternate assessment to be conducted either remotely (physically at a location) or through online invigilation (remotely proctored) under the following conditions:

- The alternate assessment assesses the same learning outcomes as the invigilated assessment would have.
- The alternate assessment meets the TPB's requirements regarding independent supervision. This means the remote or online invigilation is conducted through some form of live invigilation in terms of supervisory oversight.
- The approved course provider maintains a record of all individuals completing an alternate assessment through remote or online invigilation.
- The alternate assessment has the same weighting as the invigilated assessment.
- The alternate assessment continues to meet TEQSA or ASQA guidelines.

#### Option 2

Where Option 1 does not offer a practicable solution for approved course providers, the TPB will accept alternate assessments supervised through software driven invigilation (including utilising anti-plagiarism software). The software must offer authentication of candidates, coupled with a level of invigilation that can detect potential breaches of assessment conditions.

Further, under Option 2, the approved course provider is expected to meet the conditions set out in Option 1, other than the requirement regarding independent supervision.

#### Option 3

For approved course providers who are unable to meet the requirements of Option 1 or Option 2, the TPB will consider the use of other alternative assessment arrangements on a case by case basis.

Further, under Option 3, the approved course provider is expected to meet the conditions set out in Option 1, other than the requirement regarding independent supervision.

For consideration of alternative assessment arrangements under Option 3, contact [CourseProvider@tpb.gov.au](mailto:CourseProvider@tpb.gov.au) and ensure that your email includes the following information:

- Outline of alternative assessment arrangement.
- Details of how the alternative assessment arrangement meets the conditions set out in Option 1 (other than the requirement regarding independent supervision).
- Numbers of students impacted or expected to be impacted.
- Any other relevant information.

The TPB will consider submissions as a matter of priority and notify you of the outcome as soon as possible.

## FASEA Policy Update: Invigilated Exams interruptions due to Corona Virus

Please see below media release from the Financial Adviser Standards and Ethics Authority Ltd

17 March 2020

FASEA policy requires that examinations be invigilated and due to the Corona Virus impact we have reviewed this policy. In the case where examinations cannot be conducted as per usual HEP practice the following guidance is provided for all Higher Education Providers offering FASEA approved courses/units.

1. FASEA will allow alternative assessment for the invigilated examination under the following conditions:
  - The alternative assessment assesses the same learning outcomes as the invigilated examination
  - Alternative assessments meet TEQSA guidelines
  - HEPs maintain records of all individuals completing the alternative assessment
  - The alternative assessment has the same weighting as the invigilated examination
2. FASEA encourages the use of the variety of assessment alternatives available and use of remote proctoring if the HEP has these facilities available within TEQSA guidelines.

Please note this arrangement will be reviewed and HEPs informed of any policy changes. These arrangements are in place for current semester/trimester.

Please note this policy relates to accredited programs only and does not apply to the financial adviser examination.

If you have any questions please contact Howard Cook on:

E: [howard.cook@fasesa.gov.au](mailto:howard.cook@fasesa.gov.au)

M: 0423 047 590

Howard Cook

Accreditation Manager

## 06 | BULLETIN BOARD

### Vacancies

We are pleased to announce that the Institute for Austrian and International Tax Law, WU is offering a position as a Teaching and Research Associate. The deadline for applications is 3 June 2020.

We would be delighted if you applied for this position and please kindly distribute this announcement to other qualified colleagues.

If you would like to apply, or you know somebody who may be interested for the position please send your application only online under [www.wu.ac.at/jobs](http://www.wu.ac.at/jobs) (Reference Number 645), no later than 3 June 2020.

For more information on the position, please see our [website here](#). Direct your queries to Ms. Theodora Stergidou at [theodora.stergidou@wu.ac.at](mailto:theodora.stergidou@wu.ac.at).

### National Tax Clinic

The Australian Taxation Office is seeking interested people to provide feedback into the development of an open competitive grant program for an expanded [National Tax Clinic Program](#), as announced in the 2019-20 MYEFO.

If you would like more information, or to register your interest, please email: [NationalTaxClinics@ato.gov.au](mailto:NationalTaxClinics@ato.gov.au) or contact Kate McCarthy via phone on (07) 3149 5615

### JATTA Notice

Please remember that submissions are still open for the 2020 edition of JATTA. We have extended the final submission date until the end of June, so please consider submitting an article for publication. The journal publishes on a diverse range of tax topics – and the article does not need to have been presented at the conference this year.

Please email your submission to John McLaren at: [john.mclaren@utas.edu.au](mailto:john.mclaren@utas.edu.au)

### Do you have a Bulletin Board item?

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

 **QUT Free ePrints for Case Law**

Queensland University of Technology’s (QUT) Australian Centre for Philanthropy and Nonprofit Studies (ACPNS) researchers scan Australia and the world constantly for legal cases that involve important issues concerning charities, nonprofit organisations, philanthropy, gifts and bequests. It will be useful for those that advise nonprofit organisations, their senior management and boards. They are mainly from Australia, but cases of significance from other jurisdictions such as New Zealand, Canada, United Kingdom and USA are also included. The case notes are currently being transferred to QUT ePrints. ePrints is an institutional repository of digital research material of QUT staff and postgraduate students. The papers deposited in QUT ePrints are freely available. You can [register on the page](#) for quarterly summaries of the posted cases.

## 07 | IFA COMPETITIONS 2020

The IFA Australian branch calls for submissions from the Young scholars among us (under the age of 40, or 35) for the following IFA Prizes/Awards for 2020. The deadline for submissions has been extended to 31 May due to COVID-19.

<p style="text-align: center;"><b>Maurice Lauré Prize</b></p> <p>IFA has instituted a Prize in order to encourage scientific work on international indirect taxation. The Prize is named in honour of Maurice Lauré, who was instrumental in the first implementation of the Value Added Tax system, now applied in more than 160 jurisdictions.</p> <p><b>Subject:</b> International indirect fiscal law, comparative indirect tax law, or local indirect tax law having an important relation with fiscal law in foreign jurisdictions.</p> <p><b>Prize:</b> 5,000 Euros, plus a medal and an invitation to attend the IFA 2020 Congress in Cancun, exempted from the payment of the Congress registration fee, during which the Prize is awarded.</p> <p><b>Requirements, conditions and deadlines:</b> <a href="#">IFA website here</a></p>	<p style="text-align: center;"><b>IFA President YIN Scientific Award</b></p> <p>The IFA President YIN Scientific Award was launched in 2014. This Award shall be awarded for an article published in a qualified medium, furthering the understanding of international fiscal law or comparative tax law, providing practical solutions to problems arising in cross-border transactions or situations.</p> <p><b>Subject:</b> Any topic furthering the understanding of international fiscal law or comparative tax law, providing practical solutions to problems arising in cross-border transactions or situations.</p> <p><b>Prize:</b> 1,000 Euros, plus a memento, a certificate and an invitation to attend the IFA 2020 Congress in Cancun, exempted from the payment of the Congress registration fee, during which the Prize is awarded.</p> <p><b>Requirements, conditions and deadlines:</b> <a href="#">IFA website here</a></p>	<p style="text-align: center;"><b>Mitchell B. Carroll Prize</b></p> <p>In order to encourage scientific work, the IFA has instituted a Prize as a tribute to its first Honorary President, Mitchell B. Carroll. This Prize is awarded for a work dealing with international fiscal questions, comparative fiscal law or local fiscal law with the emphasis on the relationships with the fiscal law of foreign jurisdictions.</p> <p><b>Subject:</b> International fiscal law, comparative tax law, or local tax law having an important relation with fiscal law in foreign jurisdictions.</p> <p><b>Prize:</b> 5,000 Euros, plus a medal and an invitation to attend the IFA 2020 Congress in Cancun, exempted from the payment of the Congress registration fee, during which the Prize is awarded.</p> <p><b>Requirements, conditions and deadlines:</b> <a href="#">IFA website here</a></p>
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## 08 | TAX LAW DEVELOPMENTS

### Australia

#### [Commissioner of Taxation v Israel Discount Bank Limited \[2020\] FCAFC 71](#)

Perram, Gleeson and Lee JJ – 23 April 2020

##### Catchwords:

- Taxation – application for leave to appeal – where primary judge made interlocutory orders requiring Commissioner of Taxation, a non-party, to provide to the plaintiffs and the Court a redacted copy of a settlement deed – where Commissioner contended that the entirety of the settlement deed was “protected information” as defined in s 355-30 of Sch 1 to the *Taxation Administration Act 1953* (Cth) – where Commissioner contended that s 355-205 precluded the Court from ordering production or disclosure of the settlement deed, even in partially redacted form – where orders requiring production stayed pending determination of the application for leave to appeal
- Practice and procedure – application for leave to appeal interlocutory orders of primary judge – whether the grant of leave would be consistent with overarching purpose and prejudice would be occasioned if leave refused – orders made adjectival to a hearing which has completed – consideration of relevant principles – application dismissed

##### The court orders that:

1. The application for leave to appeal be dismissed with costs.

#### [Mussalli v Commissioner of Taxation \[2020\] FCA 544](#)

Jagot J – 28 April 2020

##### Catchwords:

- Taxation – Income tax – Deductibility – Payments made upon entering into lease and licence agreements of franchise restaurants – Payments described as prepayments of rent – Whether payments were capital in nature or on revenue account – Substance and form – Characterisation of advantage sought – Consideration of general principles – *Income Tax Assessment Act 1997* (Cth) s 8-1 – *Income Tax Assessment Act 1936* (Cth) s 82KZMD

##### The court orders that:

1. The originating application be dismissed.
2. The applicant pay the costs of the respondent as agreed or taxed.

#### [O’Neill v Deputy Commissioner of Taxation \(Cross-vesting\) \[2020\] FCA 484](#)

Perram J – 9 April 2020

##### Catchwords:

- Practice and procedure – application for transfer of proceedings under s 5(5) of *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) to Family Court of Australia – where judicial review proceeding to overturn disallowance of claim for tax withholding credit – where Deputy Commissioner of Taxation has issued garnishee notices for the debt directed at sale proceeds of a property – where new application filed in Family Court for sale of that property – whether matters formed a single justiciable controversy

##### The court orders that:

1. The Second Applicant’s interlocutory application be dismissed.

#### [Peter Greensill Family Co Pty Ltd \(trustee\) v Commissioner of Taxation \[2020\] FCA 559](#)

Thawley J – 28 April 2020

##### Catchwords:

- Taxation – appeal under s 14ZZ of the *Taxation Administration Act 1953* (Cth) – assessment of trustee under s 98 of the *Income Tax Assessment Act 1936* (Cth) – whether capital gains distributed to a non-resident beneficiary were assessable to the resident trustee – whether capital gains were disregarded under s 855-10(1) of the *Income Tax Assessment 1997* (Cth) (ITAA 1997) – where beneficiary deemed to have capital gains under Subdiv 115-C of the ITAA

##### The court orders that:

1. The appeal is dismissed.
2. Unless either party applies within 7 days for a different order as to costs, the applicant pay the respondent’s costs.

*Peter Greensill Family Co Pty Ltd (trustee) v Commissioner of Taxation (No 2) [2020] FCA 597*

Thawley J – 5 May 2020

Catchwords:

- Practice and procedure – application to review and reconsider reasons for decision and orders made – where judgment had been delivered and orders entered – application dismissed

The court orders that:

1. The interlocutory application is dismissed.
2. The applicant pay the respondent’s costs.

*Colin Fong*

## New Zealand

### *COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Act 2020 (NZ)*

This omnibus Act, which received Royal Assent on 30 April 2020, aims to assist the Government’s response to impacts of the COVID-19 outbreak, including targeted measures providing relief to those who have been economically affected.

#### **Temporary loss carry-back regime**

A temporary tax loss carry-back measure will allow businesses that anticipate being in loss in either the 2019–20 or 2020–21 tax year to carry some or all of that loss to the preceding year, if they earned profits in that year. This measure is intended to provide fast cash flow relief for businesses in loss during the period affected by COVID-19. The measure enables tax refunds with respect to profit years to be paid before the loss year has finished. Any business that has losses qualifies for the relief.

#### **Administrative flexibility**

The Commissioner of Inland Revenue is granted a temporary discretionary power to modify due dates, timeframes, or procedural requirements for taxpayers who are economically affected by COVID-19. This power applies to requirements specified under the Inland Revenue Acts, or provisions of the *Unclaimed Money Act 1971* (NZ). The power supplements existing discretions, notably to remit use of money interest and the Commissioner’s exercise of discretion under the care and management provision.

#### **Small business cashflow scheme**

The Commissioner is empowered under the *Tax Administration Act 1994* (NZ) to lend money, on behalf of the Crown under the Small Business Cashflow (Loan) Scheme. The scheme is being launched by the Government to assist eligible SMEs that have been adversely affected by COVID-19. The Act also amends the *Income Tax Act 2007* (NZ) to ensure that conversion of a portion of the loan to a grant will not have adverse income tax implications for the applicant.

#### **Tax and social policy treatment of pension and benefit equivalent payments**

The *Income Tax Act 2007* (NZ) and *Tax Administration Act 1994* (NZ) are amended to ensure that payments made under the COVID-19 New Zealanders Stranded Overseas (‘NZSOS’) programme are subject to the same tax treatment as their standard counterparts. COVID-19 NZSOS payments that are paid in lieu of a main benefit, New Zealand superannuation, and veteran’s pension would be subject to tax and PAYE. COVID-19 NZSOS payments made in lieu of other monetary benefits paid under the *Social Security Act 2018* (NZ) (eg, orphan’s benefit and unsupported child’s benefit) would be exempt from tax, consistent with the tax treatment of their standard counterparts.

These changes also ensure there is no change in student loan obligations and entitlement to working for families tax credits. It would ensure that MSD can continue to pay the family tax credit and Best Start credit where the individual would otherwise be eligible.

The *Child Support Act 1991* (NZ) is also amended to ensure any COVID-19 NZSOS payments are appropriately considered for child support purposes.

*Jonathan Barrett*

## 09 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

<p style="text-align: center;"><a href="#"><u>14th International Conference on Tax Administration</u></a></p> <p><b>Provisional Dates:</b> 3-4 November 2020  <b>Location:</b> Sydney and Online  <b>Cost:</b> \$165 - \$1,035  <b>Theme:</b> New Frontiers in Tax Administration</p> <p>We will be back in touch probably around the end of June to confirm the conference is going ahead and open registrations. We will also confirm at that time if there is a limited opportunity to add some new papers to our program on the experience of responding to the pandemic.</p> <p>Presenters please note we will be in touch to advise you of the new deadline for papers in case you want to refresh yours to take account of recent extraordinary developments!</p> <p>Please hold the dates so you can join us to hear from leading academics, policy makers and practitioners about current and future global trends.</p>	<p><b>Inaugural Tax Special Interest Group</b></p> <p>Scheduled to be held at AFAANZ Conference planned for Melbourne in 2020 has been cancelled and postponed until 2021.</p>
<p><b>Annual Tax Research Symposium</b></p> <p>Normally organised by Griffith University, and held in July, will not run in 2020 because of the COVID-19 pandemic.</p>	<p><b>2021 ATTA Conference</b></p> <p>More information on page 2 of this edition of ATTA News.</p>

### ANU/Crawford School/TTPI Events

As a precautionary measure and based upon advice from an ANU expert panel, all public and social events at [ANU including Crawford School](#) have been cancelled until the end of semester one. This includes events organised by the [Tax and Transfer Policy Institute \(TTPI\)](#).

<a href="#"><u>The Tax Institute</u></a>	<a href="#"><u>Law Council of Australia</u></a>	<a href="#"><u>Australian Conference Alerts</u></a>
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### International

Various international events happening in the foreseeable future are listed below.

<p style="text-align: center;"><a href="#"><u>21st Global Conference on Environmental Taxation</u></a></p> <p><b>Date:</b> 24-25 September 2020  <b>Location:</b> Online  <b>Cost:</b> Unknown  <b>Theme:</b> Environmental Taxation in an Era of COVID-19</p>	<p style="text-align: center;"><a href="#"><u>5th International Taxpayer Rights Conference</u></a></p> <p><b>Date:</b> Postponed to 6-7 October 2021  <b>Location:</b> Pretoria, South Africa  <b>Cost:</b> USD\$325  <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries</p>	<p style="text-align: center;"><a href="#"><u>International Fiscal Association Congress</u></a></p> <p><b>Date:</b> Postponed to 10-15 September 2022  <b>Location:</b> Cancun, Mexico  <b>Cost:</b> Unknown  <b>Theme:</b> TBA</p>
<a href="#"><u>Canadian Tax Foundation</u></a>	<a href="#"><u>Institute for Fiscal Studies</u></a>	<a href="#"><u>Institute for Austrian and International Tax Law</u></a>
<a href="#"><u>International Bureau of Fiscal Documentation</u></a>	<a href="#"><u>International Fiscal Association</u></a>	<a href="#"><u>International Tax Planning Association</u></a>
<a href="#"><u>International Bar Association</u></a>	<a href="#"><u>International Events and Law Conferences</u></a>	<a href="#"><u>Practising Law Institute</u></a>
<a href="#"><u>American Bar Association</u></a>	<a href="#"><u>New York Bar Association</u></a>	<a href="#"><u>Hieros Gamos Worldwide Law Events</u></a>



## 10 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages.

### Domestic

#### Journal of Banking and Finance Law and Practice 2019 | Volume 30 | Part 4

ATTA Member contribution(s)

- *David Morrison and Matthew Broderick* - 'Romalpa Suppliers and the PPSA – For Better or Worse in Insolvency – Part II'

#### The Conversation

ATTA Member contribution(s)

- *Neil Warren and Richard Highfield* - '[Post-coronavirus, we'll need a working tax system, not more taxes and not higher rates](#)', 4 May 2020

Articles of Interest

- *Jonathan Karnon* - '[A temporary income tax hike is the bitter but equitable pill Australia should swallow](#)', 15 April 2020

#### Tax and Transfer Policy Institute Working Papers

Papers of Interest

- *Marcel van Kints and Robert Breunig* - '[Inflation variability across Australian households: Implications for inequality and indexation policy](#)', Paper No 3/2020
- *Cain Polidano, Andrew Carter, Marc Chan, Abraham Chigavazira, Hang To, Justin Holland, Son Nguyen, Ha Vu and Roger Wilkins* - '[The ATO longitudinal information files \(ALife\): A new resource for retirement policy research?](#)', Paper No 2/2020

#### Tax and Transfer Policy Institute Austaxpolicy.com Blog

ATTA Member contribution(s)

- *Benjamin Walker* - '[Analysing New Zealand's Digital Services Tax Proposal](#)', 23 April 2020
- *Miranda Stewart and Teck Chi Wong* - '[Open Budgets in the Time of COVID-19](#)', 30 April 2020

Articles of Interest

- *Chris Edmond, Steven Hamilton and Bruce Preston* - 'JobKeeper Could Be a Depression Beater', 9 April 2020
- *John Hewson* - 'Snap Back to What? We Need a Steady March to Reform - and a Broader Tax Base', 14 April 2020
- *Hayley Fisher and Anna Zhu* - 'The Effect of Welfare Reforms on Repartnering', 16 April 2020
- *Robert Breunig* - 'Let's Finally Reform the Tax System' 28 April 2020

#### Australian Law Journal 2020 | Volume 94 | Part 4

ATTA Member contribution(s)

- *Sonali Walpola* - 'The Qualification to the birthright doctrine and beyond: the judicial attitude to adapting the common law to Australian conditions'

#### Australian Tax Forum 2019 | Volume 34 | Issue 4

ATTA Member contribution(s)

- *John Azzi* - 'Tax certainty and taxation of international pension funds: The complicating and costly role of domestic courts'
- *Binh Tran-Nam, Lien Nguyen Phuong and Nhung Nguyen Thi Phuong* - 'Determinants of level of taxation: An empirical study of OECD countries from 2006 to 2016'
- *Sue Yong, Karen Lo, Brett Freudenberg and Adrian Sawyer* - 'Tax Compliance in the New Millennium: Understanding the variables'
- *Richard Vann* - 'In Defence of the Income Tax'

Other Articles

- *Dean Hanlon and Sean Pinder* - 'The Impact of Australia's Income Tax System on Company Ownership Structure'

#### Australian Tax Forum 2020 | Volume 35 | Issue 1

ATTA Member contribution(s)

- *Ranjana Gupta* - 'The Case for Tax in Democracies'
- *Diane Kraal, Victoria Haritos and Rowena Cantley-Smith* - 'Tax Law, Policy and Energy Justice: Re-thinking biofuels investment and research in Australia'
- *Christina Allen and Richard Krever* - 'Recognising the cost of purchased goodwill'
- *John Minas and Brett Freudenberg* - 'Australia's 50% CGT Discount: Policy Oversight?'
- *Alfred Tran and Wanmeng Xu* - 'Book-Tax Relations of Large Australian Companies'

#### Journal of Judicial Administration 2020 | Volume 29 | Part 3

ATTA Member contribution(s)

- *Sarah Murray, Ian Murray and Tamara Tulich* - 'Court Delay and judicial wellbeing: lessons from self-determination theory to enhance court timeliness in Australia'

## eJournal of Tax Research

[2020 | Volume 17 | Issue 2](#)

ATTA Member contribution(s)

- *Rodney Brown, Youngdeok Lim and Chris Evans* - 'The impact of full franking credit refundability on corporate tax avoidance'
- *Julie Cassidy, Man Hung Alvin Cheng, Toan Le and Eva Huang* - 'A toss of a (bit)coin: the uncertain nature of the legal status of cryptocurrencies'
- *Xuerui (Estelle) Li and Alfred Tran* - 'An empirical study on cross-border profit shifting in Australia'
- *Annet Wanyana Oguttu and Ann Kayis-Kumar* - 'Curtailling aggressive tax planning: the case for introducing mandatory disclosure rules in Australia (part 2) – cues from the United Kingdom and South Africa'
- *Andrew Smith* - 'Cost sharing of pensions paid under the 2001 and 2016 Australia-New Zealand social security agreements: should it be time for change?'
- *Victoria Plekhanova* - 'Value creation within multinational platform firms: a challenge for the international corporate tax system'

## International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

### OECD Taxation Working Papers

- Hannah Simon and Michelle Harding - '[What drives consumption tax revenues? Disentangling policy and macroeconomic drivers](#)', 2 April 2020

### International Bureau of Fiscal Documentation

Books of Interest

- *Joanna Wheeler (ed)* - '[The Aftermath of BEPS](#)', January 2020

Doctoral Series Books of Interest

- *Renate Buijze* - '[Tackling the international tax barriers to cross-border charitable giving: philanthropy for the arts in the era of globalization](#)', January 2020
- *Nathalie Bravo* - '[A Multilateral instrument for updating the tax treaty network](#)', March 2020

WU Institute for Austrian and International Tax Law – Tax Law and Policy Series

- *Pedro Schoueri* - '[Conflicts of international legal frameworks in the area of harmful tax competition: the modified nexus approach](#)', December 2019
- *Karoline Spies* - '[Permanent establishments in value added tax: the role of establishments in international B2B trade in services under VAT/GST law](#)', January 2020
- *Michael Lang et al (ed)* - '[Tax treaty arbitration](#)', April 2020

## 11 | CALL FOR SUBMISSIONS

### Global Conference on Environmental Taxation

[21st Conference - Online](#)

**Abstract Submission Deadline:** 15 June 2020

**Conference Dates:** Online 24-25 September 2020

**Theme:** Environmental Taxation in an Era of COVID-19

### Australian Tax Review

[Special Issue: Current Topics in International Taxation](#)

**Ranking:** A

**Manuscripts Submission Deadline:** 15 June 2020

**Publication Date:** November/December 2020

*Anthony Ting, Kerrie Sadiq and Dale Pinto*

### Journal of the Australasian Tax Teachers Association

[Volume 15 | Issue 1](#)

**Ranking:** B

**Manuscripts Submission Deadline:** 30 June 2020

**Publication Date:** November/December 2020

*John McLaren*

### Austaxpolicy.com Blog (Tax and Transfer Policy Institute)

[TTPI Working Papers and Policy Briefs](#)

**Ranking:** N/A

**Manuscripts Submission Deadline:** Continually

**Publication Date:** Continually

*tax.policy@anu.edu.au*



## 12 | BOOK REVIEW: FUNDAMENTALS OF INCOME TAXATION

*Prebble, John with Pearson, Grant Fundamentals of Income Taxation, Thomson Reuters 2018*

Professor John Prebble QC, an ATTA Hill medal winner, brings over 50 years experience as a tax law academic to his latest book, *Fundamentals of Income Taxation*. Professor Prebble currently holds a chair at Victoria University of Wellington, while also holding professorial roles at universities in Austria and Australia.

*Fundamentals of Income Taxation* is a book about the principles of income tax law in New Zealand. Prebble describes the objective of the book, in its introduction, to set out the basics of income tax law, concentrating on substantive law with little attention to procedural matters. Despite covering the ‘basics’, there is a rich assortment of cases discussed throughout the book, with the main issues and principles established by the case, readily accessible to the reader.

The book has five parts: essentials of income tax and its administration; the characteristics of income; treatment of income in the tax regime; distinguishing capital/revenue and taxable/non-taxable; deductions; and tax avoidance (an introduction). Most of the book deals with principles relating to income and deductions. The focus is mainly on areas where the legislation is less prescriptive and common law principles apply to supplement or interpret the Income Tax Act 2007. It is also helpful, in areas, to understand how the legislative provisions evolved from common law principles.

For those of us teaching comprehensive tax courses in New Zealand (or even Australia to some degree), this book is an excellent supplementary text for students to gather a deeper understanding in areas of substantive income tax law, beyond the mainstream textbooks. Although this is a book written for the use of students, it is valuable for anyone with an interest in tax to have on their bookshelves as a reference text.

*Alison Pavlovich*

## 13 | QUOTABLE QUOTES

“In a world obsessed with travel, trade and technology, the role of corporations in creating and satisfying human needs has never been greater. Yet daily reminders of corporate greed in the form of tax-minimisation, personal data harvesting and outsourcing of jobs to low-cost centres complicate our relationship with global capital.

Interesting, then, to be reminded by William Dalrymple’s new book about the East India Company that this has been the case for more than 400 years. Founded in 1599 with a royal patent affording it a monopoly on trade between Britain and Asia, the EIC was the original, archetypal, rapacious corporate entity.”

*Christopher Kremmer*

Read more here: [Sydney Morning Herald](#)

“One of the nation’s most respected tax experts and the head of the Australian National University’s Tax and Transfer Policy Institute, Robert Breunig, said stamp duty was an “obvious candidate” for reform.

He has proposed a special tax summit should focus on the economic problems being caused by the way Australia’s current tax system operated. That included the burden of post-virus economic repair falling on younger people.

“Given the current spirit of bipartisanship evidenced in the passing of pandemic legislation and the formation of a cross-party, state and federal unity government, there is a golden moment to seize,” he said.

“If we can effectively reposition the tax and transfer systems, we will be able to restart the economic engines in a more sustainable manner.””

*Shane Wright and Noel Towell*

Read more here: [Sydney Morning Herald](#)

“The federal government is being urged to make tax reform a central plank of the nation’s strategy to reignite growth when the coronavirus threat recedes and social distancing restrictions are lifted.

As planning gets underway on how to reopen the economy without risking a resurgence of COVID-19 infections, Reserve Bank of Australia governor Philip Lowe has fueled debate by nominating tax reform as a key element of the agenda.

In a frank assessment of the economic outlook, Dr Lowe said in the first half of the year the country would suffer the biggest hit to output and income since the 1930s, saddling it with job losses, business closures and debts that are likely to crimp activity for a considerable period.

“Whatever the timing of the recovery, when it does come, we should not be expecting that we will return quickly to business as usual,” the RBA governor said. “Rather, the twin health and economic emergencies that we are experiencing now will cast a shadow over our economy for some time to come.”

The Reserve Bank governor said the “best way” of dealing with these consequences was to reinvigorate the growth and productivity agenda, and nominated tax reform, along with improvements in infrastructure, training, regulation and industrial relations as key areas to be addressed.

In particular, he said “we should be looking again at the way we tax income generation, consumption and land in this country”.

*Adrian Rollins*

Read more here: [Canberra Times](#)





## ISSUE HIGHLIGHTS

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“Nothing is really quite as satisfying as an income tax refund.”

- F.J. Raymond

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## 01 | PRESIDENTIAL COLUMN

### President's Note

Welcome to the June newsletter.

I hope everyone is keeping well as we head into winter.

I would like to draw your attention to the announcement immediately following this column about the January 2021 ATTA conference. As you will see, a decision has been made to postpone this to 19-21 January 2022. The decision was made by the ATTA Executive and the conference organisers. This decision was not made lightly, and it was made with heavy hearts.

Prior to the pandemic, considerable ATTA funds had already been outlaid as deposits for venues and the window to have these funds rolled over to 2022 was closing. As we can all appreciate the current environment is both unpredictable and unprecedented. A further consideration in the decision was the financial impact that many of our members, and their universities, are facing in the current environment. We heard feedback that members were less likely to receive financial support to attend conferences. We were also made aware that PhD students were facing constrained resources that could impact on attendance.

Many universities are still working through their responses to the impact of COVID-19 on their revenue, which compounds the uncertainty surrounding the viability of a 2021 conference. Another factor informing our decision was the potential for travel restrictions for those outside Australia and New Zealand (including quarantining).

Following on from this decision, we will not make a call for ATTA Hill Medals this year. Existing funding for initiatives such as the ATTA Promoting Women in Tax Academia Scholarship will be extended for a further year to reflect the postponed 2021 conference.

We know how much the ATTA community values the opportunity to meet at the annual conference. Therefore, the Canterbury conference organisers have proposed that we hold two one-day symposiums around the time of the usual conference – one in NZ (Christchurch) and one in Australia.

We would very much appreciate your feedback on this proposed initiative. Please email Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz)) and me ([Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)) with your



feedback by the end of July.

We are interested in hearing from anyone interested in hosting the Australian symposium. So, if this is something that may be of interest to you, please also get in touch with Adrian and me.

Our plan is that there will still be a 2021 edition of JATTA. We are finalising these arrangements and will report back to you in a future ATTA Newsletter.

Please also see the tribute below [at 5] to Paul Drum who was well-known to many in the tax profession.

With best wishes

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

Both the ATTA 2021 conference organising committee and the ATTA Executive have reached the unprecedented decision that we are postponing the January 2021 conference to 19-21 January 2022 (equivalent dates) due to the impact of COVID-19. The decision comes with a background of borders being closed and likely at best to open to Australia only (meaning a large portion of our attendees from outside the region could not come), and with many academics and graduate students facing reduced conference budgets and thus being unable to attend.

Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz))



## 03 | ATTA 2021 SYMPOSIUM SUGGESTION

The full formal ATTA conference to be held in Christchurch in January 2021 will now be postponed until January 2022. In an attempt to provide a feeling of collegiality and continuity to the ATTA community it is suggested that a one day symposium be held both in New Zealand and Australia. This would in particular provide an opportunity for PhD students within our discipline to present their ongoing research and receive valuable feedback. There would be no particular 'theme' to the symposium so all papers are welcome.

The proposed symposium will be held in lieu of the official ATTA conference. One suggestion is to hold a one day symposium at the University of Canterbury, with potentially a similar one day event in Australia. Expressions of interest are welcome for someone in Brisbane, Melbourne or Sydney to host a symposium. The symposiums could be run on different days with the opportunity to have people either 'Zoom' in to the sessions or attend in person. There would be no concurrent sessions.

### *Abstracts*

Abstracts only would be required prior to the event to put together a programme. There would be no formal review of papers. Abstracts would be required by 30 November 2020.

### *Symposium Dates Suggested*

The dates tentatively being considered would be around the usual ATTA conference time, with perhaps the New Zealand symposium being held on Wednesday 20 January 2021 and the Australian symposium, should one go ahead, on Thursday 21 January.

### *Cost*

The University of Canterbury has expressed willingness to host the NZ symposium. We anticipate a small cost for those attending in person to cover catering expenses.

### *Tentative Day Programme*

- Welcome
- Morning Presentations (with a morning tea break) 9am to 12 noon
- Lunch and mingling (1 metre apart) 12 noon to 1pm
- Afternoon Presentations (with an afternoon tea break) 1pm to 5pm
- Social Event and Dinner 6pm (for those attending in person)

### *Presentations*

The usual 20 to 25 minutes presentation with up to 10 minutes for comments/questions.

Feedback from the ATTA community is sought as to whether this would be of interest to proceed. Please email your views to Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz)), and Lisa Marriott ([Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)) by the end of July.

## 04 | ARRIVALS, DEPARTURES AND HONOURS

### **Welcome**

Adrian Hanrahan is a sessional lecturer and tutor at Curtin Law School teaching Superannuation and Estate Planning subjects. Adrian works in private wealth advisory for Australian Unity and is a Certified Financial Planner practitioner with the Financial Planning Association, registered tax practitioner, qualified accountant and a SMSF specialist adviser. Adrian holds a Bachelor of Laws (Curtin University), a Bachelor of Economics & Financial Planning (Curtin University) and a Masters in Investment Management & Financial Planning (Kaplan Professional). Adrian is an experienced presenter for Legalwise and the Institute of Public Accountants and sits on a number of national committees representing the financial planning profession and responding to draft legislation and government consultations on taxation and superannuation law matters. Adrian's areas of interest include the interaction of the taxation and transfer system, Chapter 7 of the Corporations Act and contemporary issues in elder law.



## 05 | TRIBUTE TO PAUL DRUM

It is with very great sadness that we advise that our colleague Paul Drum FCPA passed away unexpectedly last week after suffering a suspected heart attack.

Paul has been the voice of CPA Australia in the public debate for more than 22 years. He has been at the forefront of policy debates in Australia and globally advocating for CPA Australia, our members and the interests of the profession.

Paul was deeply respected by policy makers around the world for his expertise in the tax and business arena. His skills as a communicator meant he was regularly featured in the media in print, radio and television and he was much sought after as a presenter at business conferences.

Members would also be very familiar with Paul's work through his prominent contributions to INTHEBLACK over many years.

Many members would have known Paul personally and would know that in addition to being a highly intelligent and passionate advocate, he was extremely generous and very funny. He was not just a colleague but also a much-loved friend.

Paul has made an extraordinary contribution to CPA Australia and he will be greatly missed.

Our thoughts are with his wife Heather, and two daughters Elizabeth and Gabrielle at this very sad time.

*Peter Wilson AM FCPA*  
President and Chair  
On behalf of CPA Australia's Board of Directors

*Andrew Hunter*  
CEO  
CPA Australia



1961 - 2020

Source: Emails to Brett Freudenberg and Dale Pinto, 1 June 2020

Paul was a keynote speaker at the 2018 ATTA Conference at Monash University. See more here: [Monash Past Events](#)

## 06 | BULLETIN BOARD

### **JATTA Notice**

Please remember that submissions are still open for the 2020 edition of JATTA. We have extended the final submission date until the end of June, so please consider submitting an article for publication. The journal publishes on a diverse range of tax topics – and the article does not need to have been presented at the conference this year.

Please email your submission to John McLaren at: [john.mclaren@utas.edu.au](mailto:john.mclaren@utas.edu.au)

### **Do you have a Bulletin Board item?**

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

### **Athens Institute for Education and Research**

Dear Colleague,

I would like to bring to your attention the organization of the 17th Annual International Conference on Law, 13-14 July 2020, Athens, Greece (Academics Responsible: Dr. David A. Frenkel, LL.D., Emeritus Professor, Law Area, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, Israel & Dr. Michael P. Malloy, Distinguished Professor & Scholar, University of the Pacific, USA.). You are more than welcome to submit a proposal for presentation. The situation with the pandemic in Greece is good and if it continues we might be able to accept onsite presentations too. Please note that in order to organize onsite presentations we need a minimum number of participants to come to Athens. Of course, the onsite presentations will be combined with the remote presentations of the participants who won't be able to travel to Athens. If you are interested in presenting either online, or onsite, our administration can send you more information.

My best regards,

Nick

*Dr Nicholas Pappas*

Vice President of Academic & Membership, Athens Institute for Education and Research (ATINER)  
Professor, Sam Houston University, USA

<[atiner@athenian-meeting.gr](mailto:atiner@athenian-meeting.gr)>

### **Vacancies**

[Lecturer/Assistant Professor/Associate Professor of Accounting](#)

- **Posting Number:** F29P
- **Location:** Halifax, Canada
- **Position Type:** Tenure Stream
- **Closing Date:** 31 August 2020

The [Rowe School of Business \(RSB\)](#) [[Dalhousie University](#)] invites applications for a probationary tenure-track or tenure-track appointment in Accounting at the rank of Lecturer, Assistant or Associate Professor (dependent upon qualifications and experience), commencing July 1, 2021 (negotiable). Applicants must have a PhD (or ABD) in Accounting from an accredited business school and a Canadian CPA designation in good standing. Evidence of teaching effectiveness in upper level courses and of strong research performance are required. Candidates must be able to meet the School's accrediting body's (AACSB) academic qualification requirements.

The successful applicant will be expected to engage in leading-edge research with faculty in Accounting, to teach courses in these areas at the undergraduate and graduate levels, and to contribute to the academic life of the School through committee service and other activities. Preference will be given to candidates who have demonstrated depth of teaching ability in intermediate and advanced accounting courses as evidenced by a history of strong teaching evaluations.

## 07 | TAX LAW DEVELOPMENTS

### New Zealand

The *Taxation (Use of Money Interest Rates) Amendment Regulations 2020* (NZ) decrease the taxpayer's rate of interest on unpaid tax from 8.35% to 7.00% per annum; and decrease the Commissioner's rate of interest on overpaid tax from 0.81% to 0.0% per annum.

The changes take effect from 8 May 2020.

Jonathan Barrett

### Australia

*Watson as trustee for the Murrindindi Bushfire Class Action Settlement Fund v Commissioner of Taxation* [2020] FCAFC 92

Kenny, Davies and Thawley JJ – 27 May 2020

Catchwords:

- Taxation – allowable deductions – where the taxpayer is the scheme administrator of the Murrindindi Bushfire Class Action Settlement Scheme – whether the costs and expenses incurred by the taxpayer in administering the Scheme are deductible under s 8-1 of the *Income Tax Assessment Act 1997* (Cth) – whether the costs were incurred in gaining or producing assessable income – whether the costs were incurred in carrying on a business – whether the costs were an outgoing of capital or of a capital nature – appeal dismissed

The court orders that:

1. The appeal be dismissed.
2. Subject to Order 3, the appellant pay the respondent's costs, as agreed or assessed.
3. If either party seeks a different order as to costs, such party is to file short written submissions within 7 days.

*Deputy Commissioner of Taxation v Shi* [2020] FCAFC 100

Davies, Lee and Stewart JJ – 4 June 2020

Catchwords:

- Evidence - privilege against self-incrimination - where disclosure order in connection with freezing orders required disclosure of worldwide assets - where respondent objected to disclosure of certain information on the basis that it may tend to incriminate and filed a privilege affidavit under s 128A(2) of the *Evidence Act 1995* (Cth) (*Evidence Act*) – where respondent applied for return of privilege affidavit – construction of s 128A of the *Evidence Act* – onus of proof under s 128A(6) of the *Evidence Act* – whether primary judge erred in finding that the interests of justice did not require disclosure of the information in the privilege affidavit – interests of justice did not require disclosure

The court orders that:

1. Leave to appeal on the first ground of the draft notice of appeal be granted.
2. Leave to appeal on the second, third and fourth grounds of the draft notice of appeal be refused.
3. The appeal be dismissed.
4. The Applicant pay the Respondent's costs of the proceeding.
5. Subject to order 6, the copy of the Privilege Affidavit retained by the Court (and the original if it is located) be returned to the First Respondent pursuant to section 128A(5) of the *Evidence Act 1995*.
6. Order 5 be stayed until the later of:
  - (a) 28 days from the date of these orders; or
  - (b) the determination of any application for special leave to appeal to the High Court from these orders filed before the expiry of 28 days from the date of these orders; or
  - (c) in the event that special leave to appeal from these orders is granted, the determination of that appeal; or
  - (d) the determination of any application commencing proceedings in the original jurisdiction of the High Court filed before the expiry of 28 days from the date of these orders.
7. The copy of the Privileged Affidavit retained by the Court (and the original if it is located) remain in a sealed envelope marked "confidential" until further order of the Court.



[Brown v Commissioner of Taxation \[2020\] FCA 817](#)

Kerr, J – 9 June 2020

Catchwords:

- Taxation - director penalties - application for review of decision of delegate of Commissioner of Taxation under *Administrative Decisions (Judicial Review) Act 1977* (Cth) - where delegate decided that defence in s 269-35(2) of Sched 1 to the *Taxation Administration Act 1953* (Cth) not made out - where no reference in reasons to s 269-35(3) as would inform analysis of what constituted “reasonable steps” – *Canty v Deputy Commissioner of Taxation* [2005] NSWCA 84; 63 NSWLR 152 – case distinguishable on the facts – not to be substituted for the words of the statute – decision set aside
- Taxation – director penalties – application for review of decision of delegate of Commissioner of Taxation under *Administrative Decisions (Judicial Review) Act 1977* (Cth) – whether remittal to Commissioner futile – not inevitable that relief would be refused – remittal not futile due to concurrent proceedings in Supreme Court of Queensland – matter remitted to Commissioner for determination according to law

The court orders that:

1. Having regard to sections 5(1)(f) and 5(2)(b) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR Act), the decision of the delegate of the Commissioner of Taxation dated 5 March 2019 under s 269-35(4A) of Schedule 1 to the *Taxation Administration Act 1953* (Cth) is set aside pursuant to s 16 of the ADJR Act, and the matter remitted to the Commissioner for determination according to law.
2. The Respondent pay the Applicant’s costs, as agreed or assessed.

Colin Fong

## 08 | CALL FOR SUBMISSIONS

**17th Annual International Conference on Law**  
Presentation Papers

More information on page 5 of this edition of ATTA News.

*Nicholas Pappas*

**Australian Tax Review**  
[Special Issue: Current Topics in International Taxation](#)

**Ranking:** A  
**Manuscripts Submission Deadline:** 15 June 2020  
**Publication Date:** November/December 2020

*Anthony Ting, Kerrie Sadiq and Dale Pinto*

**Journal of the Australasian Tax Teachers Association**  
[Volume 15 | Issue 1](#)

**Ranking:** B  
**Manuscripts Submission Deadline:** 30 June 2020  
**Publication Date:** November/December 2020

*John McLaren*

**Austaxpolicy.com Blog (Tax and Transfer Policy Institute)**  
[TTPI Working Papers and Policy Briefs](#)

**Ranking:** N/A  
**Manuscripts Submission Deadline:** Continually  
**Publication Date:** Continually

*tax.policy@anu.edu.au*

## 09 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

<p style="text-align: center;"><a href="#"><u>14th International Conference on Tax Administration</u></a></p> <p><b>Provisional Dates:</b> 3-4 November 2020  <b>Location:</b> Sydney and Online  <b>Cost:</b> \$165 - \$1,035  <b>Theme:</b> New Frontiers in Tax Administration</p> <p>We will be back in touch probably around the end of June to confirm the conference is going ahead and open registrations. We will also confirm at that time if there is a limited opportunity to add some new papers to our program on the experience of responding to the pandemic.</p> <p>Presenters please note we will be in touch to advise you of the new deadline for papers in case you want to refresh yours to take account of recent extraordinary developments!</p> <p>Please hold the dates so you can join us to hear from leading academics, policy makers and practitioners about current and future global trends.</p>	<p><b>Inaugural Tax Special Interest Group</b></p> <p>Scheduled to be held at AFAANZ Conference planned for Melbourne in 2020 has been cancelled and postponed until 2021.</p>
	<p><b>Annual Tax Research Symposium</b></p> <p>Normally organised by Griffith University, and held in July, will not run in 2020 because of the COVID-19 pandemic.</p>
	<p><b>2021 ATTA Conference</b></p> <p>More information on pages 2 and 3 of this edition of ATTA News.</p>

### ANU/Crawford School/TTPI Events

As a precautionary measure and based upon advice from an ANU expert panel, all public and social events at [ANU including Crawford School](#) have been cancelled until the end of semester one. This includes events organised by the [Tax and Transfer Policy Institute \(TTPI\)](#).

<a href="#"><u>The Tax Institute</u></a>	<a href="#"><u>Law Council of Australia</u></a>	<a href="#"><u>Australian Conference Alerts</u></a>
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### International

Various international events happening in the foreseeable future are listed below.

<p style="text-align: center;"><a href="#"><u>21st Global Conference on Environmental Taxation</u></a></p> <p><b>Date:</b> 24-25 September 2020  <b>Location:</b> Online  <b>Cost:</b> Unknown  <b>Theme:</b> Environmental Taxation in an Era of COVID-19</p>	<p style="text-align: center;"><a href="#"><u>5th International Taxpayer Rights Conference</u></a></p> <p><b>Date:</b> Postponed to 6-7 October 2021  <b>Location:</b> Pretoria, South Africa  <b>Cost:</b> USD\$325  <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries</p>	<p style="text-align: center;"><a href="#"><u>International Fiscal Association Congress</u></a></p> <p><b>Date:</b> Postponed to 10-15 September 2022  <b>Location:</b> Cancun, Mexico  <b>Cost:</b> Unknown  <b>Theme:</b> TBA</p>
<a href="#"><u>Canadian Tax Foundation</u></a>	<a href="#"><u>Institute for Fiscal Studies</u></a>	<a href="#"><u>Institute for Austrian and International Tax Law</u></a>
<a href="#"><u>International Bureau of Fiscal Documentation</u></a>	<a href="#"><u>International Fiscal Association</u></a>	<a href="#"><u>International Tax Planning Association</u></a>
<a href="#"><u>International Bar Association</u></a>	<a href="#"><u>International Events and Law Conferences</u></a>	<a href="#"><u>Practising Law Institute</u></a>
<a href="#"><u>American Bar Association</u></a>	<a href="#"><u>New York Bar Association</u></a>	<a href="#"><u>Hieros Gamos Worldwide Law Events</u></a>

## 10 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages.

### Domestic

#### Chartered Accountants Australia and New Zealand

ATTA Member contribution(s)

- *Peter Vial* - '[Budget 2020: Our scorecard](#)'

#### The Conversation

ATTA Member contribution(s)

- *Victoria Plekhanova* - '[Google and Facebook pay way less tax in New Zealand than in Australia – and we're paying the price](#)', 13 May 2020
- *Ann Kayis-Kumar, Fiona Anne Martin, Jack Noone and Michael Walpole* - '[Performers and sole traders find it hard to get JobKeeper in part because they get behind on their paperwork](#)', 25 May 2020

#### Tax and Transfer Policy Institute

##### [Working Papers](#)

Papers of Interest

- *Nicolas Herault and Guyonne Kalb* - '[Understanding the rising trend in female labour force participation](#)', Paper No 5/2020

#### Tax and Transfer Policy Institute

##### [Austaxpolicy.com Blog](#)

ATTA Member contribution(s)

- *Livia Gonzaga, Leslie Nethercott and Esin Ozdil* - '[Understanding the Implications of Country-By-Country Reporting for Australia](#)', 11 May 2020
- *Miranda Stewart and Maria Sandoval-Guzman* - '[Australia Needs a Sustainable Green Approach to Tax Reform](#)', 4 June 2020
- *Victoria Plekhanova* - '[International Tax Policy for the Global Platform Economy](#)', 9 June 2020

Articles of Interest

- *Steven Hamilton* - 'How to Tweak JobKeeper, If We Must', 12 May 2020
- *Peter Davidson* - 'A Basic Income for Hard Times', 7 May 2020
- *Peter Whiteford* - 'When the Coronavirus Supplement Stops, JobSeeker Needs to Increase by \$185 a Week', 25 May 2020
- *Yvette Mojica-Perez, Sarah Callinan and Michael Livingston* - 'Examining Beverage-Specific Trends in Youth Drinking in Australia Before and After the Implementation of the 'Alcopops Tax'', 21 May 2020
- *Cathryn Lee and Chris Richardson* - 'The Outlook for the Australian Budget', 18 May 2020

#### New Zealand Journal of Taxation Law & Policy

##### [2020 | Volume 25 | Issue 1](#)

ATTA Member contribution(s)

- *Adrian Sawyer and Lin Mei Tan* - 'Editorial'
- *Lisa Marriott and Jonathan Barrett* - 'Income and Asset Deprivation as Applied to Student Allowances and the Residential Care Subsidy'
- *Sue Yong and Brett Freudenberg* - 'Perceptions of Tax Compliance by SMEs and Tax Practitioners in New Zealand: A Divergent View?'
- *Arnaldo Purba and Alfred Tran* - 'Base Erosion and Profit Shifting in Indonesia'

Other Articles:

- *David Sutton* - 'Why New Zealand Is Alone in the OECD in Resisting the Introduction of a Capital Gains Tax: Examining the Recent Debate'

#### Taxation in Australia

##### [2020 | Volume 54 | Issue 8](#)

ATTA Member contribution(s)

- *Peter Godber* - 'Influential leaders to address The Tax Summit 2020'

Other Articles:

- *Giles Hurst* - 'Reaching the summit through considered investments'
- *Stephanie Caredes* - 'Success breeds success'
- *Andrew Burns* - Tax and natural disasters
- Studying towards GDATL and CTA
- *Peter Slegers and Joshua Pascale* - 'Trust asset revaluation strategies revisiting the practice'
- *Ian Raspin and Mark Morris* - 'Death and income tax - Some discrete issues: Part 1'
- *David Montani* - 'Foreign residents and the main residence exemption no more'
- *Edward Henneby* - 'Interpreting and varying trust deeds'
- *Daniel Butler and Bryce Figot* - 'What is a reversionary pension?'
- *Michael Norbury* - 'Eichmann and storing on vacant land'
- *Luke Bugden and Nick Rogaris* - 'Foreign superannuation funds and sovereign immunity'

### Taxation in Australia

[2020 | Volume 54 | Issue 9](#)

ATTA Member contribution(s)

- *Peter Godber* - 'Reflections from The Tax Summit 2020'

Other Articles:

- *Giles Hurst* - 'At the heart of a thriving tax community'
- *Stephanie Caredes* - 'Is 40 the new 30?'
- *Jordan Phung* - 'The application of GST to sales of real property'
- *Renuka Somers* - 'Structuring cross-border transactions: Part 1'
- *Tamara Cardan* - 'The director penalty regime and its extension to GST'
- *Ian Raspin, Mark Morris and Lyn Freshwater* - 'Death and income tax - Some discrete issues: Part 2'
- *Courtney van Zyl* - 'SMSF death benefit distributions: Lessons from Marsella v Wareham'
- *Denise Tan* - 'Transfer to a trustee found to be non-dutiable'
- *Daniel Butler* - 'How the CGT rules work when a pension is in play'
- *Edwin Baghdasaryan and Jonathan Malone* - 'TA 2020/1: Intangible assets'

### Taxation in Australia

[2020 | Volume 54 | Issue 10](#)

ATTA Member contribution(s)

- *Peter Godber* - 'Operating in a COVID-19 world – together'

Other Articles:

- *Giles Hurst* - 'From strength to strength with our members'
- *Bruce Quigley* - 'We're all in this together'
- *David Montani* - 'Limiting deductions for "vacant land"'
- *Renuka Somers* - 'Structuring cross-border transactions: Part 2'
- *Jared Clements* - 'Constructive ownership under the WA Duties Act'
- *Tim Donlan and Katerina Peiros* - 'Foreign person: Potential discretionary trust beneficiary'

## International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

### National Tax Journal

[2020 | Volume 73 | Issue 1](#)

Articles of Interest:

- *Riley Wilson* - 'The EITC and Employment Transitions: Labor Force Attachment and Annual Exit'
- *Thomas R Kubick, G Brandon Lockhart, and John R Robinson* - 'Does Inside Debt Moderate Corporate Tax Avoidance?'
- *Vanda Almeida* - 'Income Inequality and Redistribution in the Aftermath of the 2007–2008 Crisis: The US Case'
- *Gila Bronshtein and Christos A Makridis* - 'The Declining Insurance Benefit in the Municipal Bond Market'
- *Austin J Drukker, Ted Gayer, and Alexander K Gold* - 'Tax-Exempt Municipal Bonds and the Financing of Professional Sports Stadiums'
- *William F Fox* - 'The Influence of Autonomous Vehicles on State Tax Revenues'
- *Ronald C Fisher* - 'Governmental Expenditure Implications of Autonomous Vehicles'
- *Benjamin Y Clark* - 'The Impacts of Autonomous Vehicles on Local Government Budgeting and Finance: Case of Solid Waste Collection'

### National Tax Journal

[2020 | Volume 73 | Issue 2](#)

Articles of Interest:

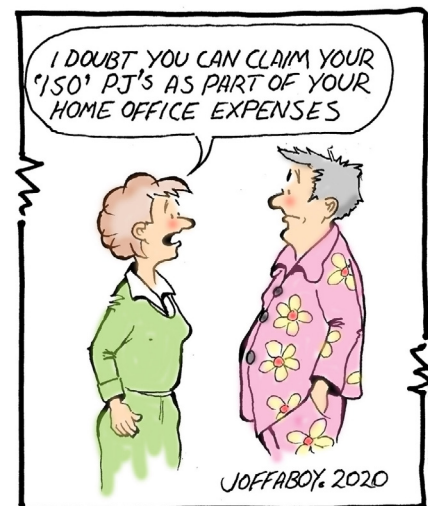
- *Jost H Heckemeyer and Aaron K Hemmerich* - 'Information Exchange and Tax Haven Investment in OECD Securities Markets'
- *Taylor Cranor, Jacob Goldin, Tatiana Homonoff, and Lindsay Moore* - 'Communicating Tax Penalties to Delinquent Taxpayers: Evidence from a Field Experiment'
- *Michael Overesch, Sabine Strueder, and Georg Wamser* - 'Do US Firms Avoid More Taxes Than Their European Peers? On Firm Characteristics and Tax Legislation as Determinants of Tax Differentials'
- *Erik Hembre* - 'TANF Effective Benefit Guarantees, Tax Rates, and Child-Only Penalties, 2000-2016'
- *Louis Kaplow* - 'A Unified Perspective on Efficiency, Redistribution, and Public Policy'
- *D Mark Anderson, Kyutaro Matsuzawa, and Joseph J Sabia* - 'Cigarette Taxes and Teen Marijuana Use'
- *Benjamin Hansen, Keaton Miller, Boyoung Seo, and Caroline Weber* - 'Taxing the Potency of Sin Goods: Evidence from Recreational Cannabis and Liquor Markets'
- *Christopher Mace, Elena Patel, and Nathan Seegert* - 'Marijuana Taxation and Imperfect Competition'
- *Douglas A Kahn and Howard Bromberg* - 'Medical Marijuana, Taxation, and Internal Revenue Code Section 280E'

## 11 | QUOTABLE QUOTES

“Late yesterday, the ATO and Treasury advised the Government of a reporting error in estimates of the number of employees likely to access the JobKeeper program. The enrolment forms completed by 910,055 businesses who have self-assessed as eligible under the scheme had indicated that this program would cover around 6.5 million eligible employees. The ATO’s review of these forms has found that around 1,000 of those businesses appear to have made significant errors when reporting the estimate of eligible employees on their enrolment form. The most common error was that instead of reporting the number of employees they expected to be eligible, they reported the amount of assistance they expected to receive. For example, over 500 businesses with ‘1’ eligible employee reported a figure of ‘1,500’ (which is the amount of JobKeeper payment they would expect to receive for each fortnight for that employee).

This reporting error has come to light as the ATO and Treasury have been analysing the amounts being paid out under the scheme, reconciling these with the estimates provided by enrolled businesses of the likely number of eligible employees. It was not picked up by the ATO earlier as their primary focus in the first fortnight of JobKeeper payments was on ensuring that JobKeeper payments were paid promptly to those eligible for them, and not paid to those who were ineligible. These initial estimates from businesses of employees covered are not linked to payments, and so were not as carefully analysed.”

Read more here: [Treasury JobKeeper Media Release](#)



Source: [Warrandytediary.com](http://Warrandytediary.com)

Comedy Group Sketchshe send up Australian Government’s JobKeeper allowance in hilarious new skit.

Read more here: [Grazia Magazine](#)

“The estimated cost of the scheme has been revised down to \$70 billion, however it is a demand-driven program.

“This reporting error has come to light as the ATO and Treasury have been analysing the amounts being paid out under the scheme, reconciling these with the estimates provided by enrolled businesses of the likely number of eligible employees,” Treasury said in a statement.

“It was not picked up by the ATO earlier as their primary focus in the first fortnight of JobKeeper payments was on ensuring that JobKeeper payments were paid promptly to those eligible for them, and not paid to those who were ineligible.

“These initial estimates from businesses of employees covered are not linked to payments, and so were not as carefully analysed.”

Australian Taxation Office Second Commissioner Jeremy Hirschhorn said when they noticed the discrepancy between the projected number of applicants and the actual number, they did a “line-by-line” analysis to determine what was happening.

“What became clear to us is about 1000 of the 900,000 employers had misunderstood that question in the enrolment form,” Mr Hirschhorn said. He said the data from that part of the form was being collected for “analytical purposes only” and money was only paid after the Tax Office went through each nominated employee’s details.

“With hindsight, perhaps the form could have been more straightforward,” Mr Hirschhorn said.

“However, I do note that only 1000 of the 900,000 employers misinterpreted that question. So the question was clearly reasonably clear - it is just unfortunate that 1000 employers misunderstood it.”

The revision was also necessary because “economy has been more resilient than anticipated in the original estimates, which is good news,” Mr Hirschhorn said.”

*Katie Burgess*

Read more here: [Canberra Times](#)

“As the secretary of the Treasury I take full responsibility for the revised costing of the JobKeeper program and all matters associated with the advice that Treasury has provided,” Dr Kennedy said.

The government was hounding people to their graves for not being able to dig up years old payslips and yet someone “takes full responsibility” for being \$60 billion dollars out in jobkeeper and it’s oh well better luck next time.

— captain pirate monkey with an airship (@jonkudelka) June 9, 2020

But Opposition Leader Anthony Albanese said it was “pathetic” Treasurer Josh Frydenberg had let Dr Kennedy to take the fall.

“The idea that Josh Frydenberg thinks it’s acceptable to have a public servant accept responsibility for a scheme that he has implemented under the Westminster system is just quite frankly pathetic,” Mr Albanese said.

Senator Cormann denied it was an accounting error, instead preferring to describe it as an “estimates variation”.

Read more here: [News.com.au](https://www.news.com.au)

“It sometimes pays to check the back of the sofa for those gold coins that can accidentally roll out of your back pocket. Treasury and the Tax Office have done just that.

And, guess what? Instead of a few coins, the single sock and the fluff, they’ve come up with \$60 billion dollars. Yes, after a review of the JobKeeper program, a truly astounding discovery — we won’t be plunging into debt to the tune of \$130 billion to fund it. And instead of supporting 6 million Australians, it will cover just over half that, at 3.5 million.

Putting aside the massive overcount, it’s very good news for the nation. It nearly halves the debt we thought we would accrue from this well received program. And that improves the nation’s outlook enormously.

How we got it so spectacularly wrong will be analysed from here to Christmas, but putting the embarrassment aside, this is very welcome news.”

*Dean Bilton*

Read more here: [ABC News](https://www.abcnews.com.au)

“The JobKeeper fiasco is “a rolled gold stuff-up of the highest order. It is the sort of scene that might happen in a primary school maths test.””

*Mark Riley*

Source: [Insiders, ABC TV](https://www.insiders.com.au)

“An Adelaide-based accountant told news.com.au the more unusual refunds included over the years was the depreciation of breast implants by a stripper and flight attendants claiming moisturiser – one claimed more than \$3000 worth of the beauty product in one year.

Over in Sydney, Ben Johnston from Willett Johnston Partners said his broad range of clients have included professional football players who can seek a deduction on gym memberships and various items including mouth guards.

“Sex workers for example can claim vibrators and fetish equipment but you can’t really say to a schoolteacher that you can claim a vibrator, it’s not deductible for them because they’re not in that industry,” he told news.com.au.

“It’s a tool of trade, there’s a nexus there between earning your income and equipment required to be able to earn that income.

“It’s the same as footy players who can claim mouth guards, gym fees and sunglasses and things that a lot of other industries and occupations can’t claim.””

*James Hall*

Read more here: [News.com.au](https://www.news.com.au)





## ISSUE HIGHLIGHTS

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01 | PRESIDENTIAL COLUMN

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02 | ATTA'S 33RD ANNUAL CONFERENCE

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03 | ATTA 2021 SYMPOSIUM SUGGESTION

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05 | BULLETIN BOARD

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06 | TAX LAW DEVELOPMENTS

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10 | QUOTABLE QUOTES

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"Few of us ever test our powers of deduction, except when filling out an income tax form."

- *Laurence J. Peter*

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## 01 | PRESIDENTIAL COLUMN

### *President's Note*

I hope everyone is managing the challenging balancing act of keeping up with teaching, maintaining research and retaining some sort of work/life balance in these times. It is great to see many of our ATTA colleagues highlighted in the recent publications in this newsletter. Please do keep our ATTA Newsletter General Editor, Colin Fong, updated with your activities. I think we all enjoy reading about what our colleagues are doing and achieving, especially when we have limited opportunity to meet in person.

Please see one opportunity to engage with tax colleagues at item [8] below. Miranda Stewart at Melbourne Law School is organising a Tax Research

Online Seminar series. The first session is scheduled for Thursday 30 July. I hope to "see" some of you there.

A reminder that we are proposing to hold two one-day symposiums in January 2021. One will be in Christchurch and we are hopeful that another will take place in Australia. At the time of writing this column we have not received any expressions of interest for holding a symposium in Australia. If you are interested in hosting this, please do let Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz)) and me ([Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)) know. Please see more at item [3] below.



With best wishes

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

Both the ATTA 2021 conference organising committee and the ATTA Executive have reached the unprecedented decision that we are postponing the January 2021 conference to 19-21 January 2022 (equivalent dates) due to the impact of COVID-19. The decision comes with a background of borders being closed and likely at best to open to Australia only (meaning a large portion of our attendees from outside the region could not come), and with many academics and graduate students facing reduced conference budgets and thus being unable to attend.

Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz))

## 03 | ATTA 2021 SYMPOSIUM SUGGESTION

The full formal ATTA conference to be held in Christchurch in January 2021 will now be postponed until January 2022. In an attempt to provide a feeling of collegiality and continuity to the ATTA community it is suggested that a one day symposium be held both in New Zealand and Australia. This would in particular provide an opportunity for PhD students within our discipline to present their ongoing research and receive valuable feedback. There would be no particular 'theme' to the symposium so all papers are welcome.

The proposed symposium will be held in lieu of the official ATTA conference. One suggestion is to hold a one day symposium at the University of Canterbury, with potentially a similar one day event in Australia. Expressions of interest are welcome for someone in Brisbane, Melbourne or Sydney to host a symposium. The symposiums could be run on different days with the opportunity to have people either 'Zoom' in to the sessions or attend in person. There would be no concurrent sessions.

### *Abstracts*

Abstracts only would be required prior to the event to put together a programme. There would be no formal review of papers. Abstracts would be required by 30 November 2020.

### *Symposium Dates Suggested*

The dates tentatively being considered would be around the usual ATTA conference time, with perhaps the New Zealand symposium being held on Wednesday 20 January 2021 and the Australian symposium, should one go ahead, on Thursday 21 January.



### Cost

The University of Canterbury has expressed willingness to host the NZ symposium. We anticipate a small cost for those attending in person to cover catering expenses.

### Tentative Day Programme

- Welcome
- Morning Presentations (with a morning tea break) 9am to 12 noon
- Lunch and mingling (1 metre apart) 12 noon to 1pm
- Afternoon Presentations (with an afternoon tea break) 1pm to 5pm
- Social Event and Dinner 6pm (for those attending in person)

### Presentations

The usual 20 to 25 minutes presentation with up to 10 minutes for comments/questions.

Feedback from the ATTA community is sought as to whether this would be of interest to proceed. Please email your views to Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz)), and Lisa Marriott ([Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)) by the end of July.

## 05 | BULLETIN BOARD



### Vacancies

[Lecturer/Assistant Professor/Associate Professor of Accounting](#)

- **Posting Number:** F29P
- **Location:** Halifax, Canada
- **Position Type:** Tenure Stream
- **Closing Date:** 31 August 2020

The [Rowe School of Business \(RSB\)](#) [[Dalhousie University](#)] invites applications for a probationary tenure-track or tenure-track appointment in Accounting at the rank of Lecturer, Assistant or Associate Professor (dependent upon qualifications and experience), commencing July 1, 2021 (negotiable).



### Letter to Attorney-General

"In an open letter to Attorney-General Christian Porter, about 500 women working in the law from across Australia have sought changes to the way judges are disciplined and appointed.

The letter comes after former High Court judge Dyson Heydon was found by an independent investigation to have sexually harassed young female associates of the court, as reported by The Sydney Morning Herald.

The letter was also sent to Susan Kiefel, Chief Justice of the High Court of Australia, along with another letter to thank her *for her strong, decisive and compassionate responses to the complaints in the Heydon matter, and ask her to work with the government to see these reforms implemented in a way sensitive to the protection of judicial integrity and independence*".

Source: [The Conversation](#)



### Do you have a Bulletin Board item?

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

## 04 | ARRIVALS, DEPARTURES AND HONOURS

### Honours

Institute for Austrian and International Tax Law now has a new professor: Karoline Spies, who habilitated at the Institute for Austrian and International Tax Law, joined them on 3 July 2020 as professor of tax law with focus on VAT.



### ATTA News Publishing Deadlines

Please note the following dates are approximate.

August Edition of ATTA News

- Items to the Editor by: 13 August 2020
- Publicly available on: 20 August 2020

September Edition of ATTA News

- Items to the Editor by: 11 September 2020
- Publicly available on: 21 September 2020

October Edition of ATTA News

- Items to the Editor by: 12 October 2020
- Publicly available on: 20 October 2020

## 06 | TAX LAW DEVELOPMENTS

### Australia

#### Federal Court of Australia

[\*Yeo, in the matter of Ready Kit Cabinets Pty Ltd \(in liq\) v Commissioner of Taxation \(No 2\) \[2020\] FCA 920\*](#)

Middleton J – 2 July 2020

#### Catchwords:

- Costs - application by applicants for costs on a party and party basis and then on an indemnity basis - costs follow the event - where offers of compromise were made
- Interest - payment of interest in accordance with the Court's Interest on Judgments Practice Note (GPN-INT) - no relevant delay by applicants to reduce payment of interest

#### The court orders that:

1. The name of the Respondent be amended by removing the word 'Deputy'.
2. The Respondent pay the third Applicant the claim sum of \$304,722.15.
3. The Respondent pay interest on the claim sum from 24 January 2018 until the date of this judgment determined by reference to the Court's Interest on Judgments Practice Note (GPN-INT).
4. The Respondent pay the Applicants' costs of the proceeding until 11:00am on 20 June 2019 on a party-party basis.
5. The Respondent pay the Applicants' costs of the proceeding after 11:00am on 20 June 2019 on an indemnity basis.

#### New South Wales

[\*Lee v Deputy Commissioner of Taxation \[2020\] NSWCA 95\*](#)

Payne JA, McCallum JA and Simpson AJA – 19 May 2020

#### Catchwords:

- Taxes and duties – administration of federal tax legislation – collection and recovery of taxes – PAYG tax – estimates provisions – where Notice of Estimate issued – where company did not pay the amount of the Notice of Estimate – where Director Penalty Notices issued – where appellants placed company into liquidation – whether Director Penalties were remitted pursuant to s 269-30(1) of Schedule 1 to the Taxation Administration Act 1953 – whether trial judge erred in finding that s 269-30(2) Item 2 of Schedule 1 to the Taxation Administration Act 1953 applied in respect of the Director Penalties
- Taxes and duties – administration of federal tax legislation – collection and recovery of taxes – PAYG tax – averments under s 255-50 of Schedule 1 to the Taxation Administration Act 1953 – where averments made as to unpaid PAYG amounts withheld – whether averments themselves sufficient evidence that the company had withheld PAYG amounts and not paid those amounts to the Commissioner

#### Decision:

1. Appeal dismissed;
2. Appellants to pay the respondent's costs.

[\*Chief Commissioner of State Revenue v Downer EDI Engineering Pty Ltd \[2020\] NSWCA 126\*](#)

Bathurst CJ, Macfarlan JA and Meagher JA – 1 July 2020

#### Catchwords:

- Statutory interpretation – Payroll Tax Act 2007 (NSW) – ss 32(2)(a) and 32(2)(d)(i) – relevant contract – whether payments made under a subcontract were exempt from payroll tax – whether legal title required to pass for there to be a supply of goods – whether payments were made “under” the subcontract – whether installation services were “ancillary” to the supply of goods
- Statutory interpretation – Taxation Administration Act 1996 (NSW) – ss 25 and 33 – whether the power to remit penalty tax and interest is limited

#### Decision:

1. Appeal dismissed.
2. The appellant pay the respondent's costs of the appeal.

[Deputy Commissioner of Taxation v Jaggs \[2020\] NSWSC 856](#)

Walton J – 3 July 2020

Catchwords:

- Taxation and revenue – recovery of tax related liability – ex-parte proceeding – non-remittance of Pay As You Go withholding and superannuation guarantee charge – Tax Administration Act 1953 (Cth) – Income Tax Assessment Act 1936 (Cth) – order

Conclusion:

1. “In my view, the plaintiff has established, on the evidence, its case under the amended claim. The evidence of the plaintiff is contrary to Mr Jaggs’ contentions as set out in his pleaded defence. In the circumstances, while Mr Jaggs has denied the claim and put the plaintiff to proof, the evidence in these proceedings, particularly as regards to its withholding tax liabilities, means that Mr Jaggs has failed to successfully rebut the presumption arising under the TAA with respect to the debt. Further, Mr Jaggs has failed to rebut the prima facie evidence of liability. The plaintiff should bring in short minutes reflecting this judgment. The plaintiff may address the question of costs in a short note accompanying the short minutes of order.”

**Queensland**

[Ward v Commissioner of State Revenue \[2020\] QSC 59](#)

Jackson J – 1 May 2020

Catchwords:

- Taxes and duties – Stamp duties – Appeal, Case started etc – Queensland – where the appellants held a joint interest in residential land in Queensland with two others – where the other two joint interest holders sold their interests to the appellants who purchased those interests jointly – where a half interest in the land was transferred to the appellants – where the appellants occupied the land as their home both before and after the transfer - where the respondent Commissioner assessed the dutiable transaction on the basis that section 93 of the Duties Act 2001 (Qld) applied – where the appellants objected to the respondent Commissioner’s assessment on the basis that section 93 did not apply – where the respondent Commissioner dismissed the appellants’ objection – whether section 93 applied to the transaction – where the Court found that ss 93(1) and 93(6) of the Act applied to calculate the concessional amount – where the Court held that the appeal be allowed.

The order of the Court is that:

1. The appeal is allowed.
2. There is no order as to costs.

[Deputy Commissioner of Taxation v Peters \[2020\] QSC 113](#)

Jackson J – 27 May 2020

Catchwords:

- Procedure – Civil proceedings in state and territory courts – Judgments and orders – Amending, varying and setting aside judgments and orders – Actions to review or set aside judgment or order – Other cases – where judgment was obtained against the defendant in default of filing a notice of intention to defend – where the defendant applied to set aside the default judgment – where the defendant submits that the compromise agreement entered into with the plaintiff after the judgment was entered provides a basis for the Court to set aside the judgment and dismiss the claim – where the plaintiff neither opposes nor consents to the orders sought – whether the Court can set aside the judgment and dismiss the claim having regard to facts that occurred after the judgment was entered – where the Court held that it was not appropriate to set aside the judgment on the basis of the compromise agreement as the validity of the judgment was not impeached – where the Court ordered that the judgment be permanently stayed.

The order of the Court is that:

1. The default judgment entered against the defendant dated 9 February 2018 is permanently stayed.

## Victoria

### [Annat v Commissioner of State Revenue \[2020\] VSC 108](#)

Kennedy J – 11 March 2020

#### Catchwords:

- Taxation – Land Tax – Exemption for primary production – Whether Land used primarily for the business of primary production – Whether a beneficiary of the appellant was normally engaged in a substantially full-time capacity in the business of primary production – Whether part of the Land should be regarded as a separate parcel – Evidence not reliable – Appellant has not discharged onus of proof – Assessments confirmed – *Abbott v Commissioner of Land Tax* [1985] VicRp 15; [1985] VR 164 applied – Sections 64, 67 and 70(2) Land Tax Act 2005 (Vic).

#### Conclusion:

1. “The assessments should be confirmed.”

### [Deputy Commissioner of Taxation v Haqiqi \[2020\] VSC 331](#)

Riordan J – 22 April 2020 (ex tempore)

#### Catchwords:

- Taxation law – Effect of conclusive and prima facie evidence provisions under the Income Tax Assessment Act 1936 (Cth) – Collateral challenge to an assessment on the ground of allegations of deliberate illegality and bad faith in debt recovery proceeding.
- Summary judgment – Onus on defendant to identify legal or factual material that provides an arguable response to the claim – *Hausman v Abigroup Contractors Pty Ltd* (2009) 29 VR 213 applied.
- Constitutional law – Whether there was a connection between the objects of taxation and the subject of taxation – Taxing power of the Commonwealth under s 51(ii) of the Australian Constitution not affected by an error in the assessment of taxable income.

#### Orders:

1. “I will enter judgment for the plaintiff in the following sums: (a) income tax and associated general interest charges in the sum of \$1,066,665.44; (b) shortfall interest charge and associated general interest charges in the sum of \$45,110.36; and (c) administrative penalties and associated general interest charges in the sum of \$496,322.20; being a total of \$1,608,098.00.”

### [Pitt v Commissioner of State Revenue \[2020\] VSC 362](#)

Kennedy J – 19 June 2020

#### Catchwords:

- Taxation – Appeal under s 148 of Victorian Civil and Administrative Tribunal Act 1998 (Vic) - Principal place of residence (PPR) exemption from land tax – Whether land used solely for the private benefit and enjoyment of the person who uses and occupies the PPR land – Where free and unrestricted access to residents of an eco-village at any time – No error of law in finding exemption not satisfied - Appeal dismissed - Land Tax Act 2005 (Vic) s 54(3).

Colin Fong

## New Zealand

LI 2020/129: *Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2020* (NZ)

The Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2020 reduce, from 5.26% to 4.50%, the rate of interest that applies for fringe benefit tax purposes to employment-related loans.

The new rate applies, until revised, from the quarter beginning 1 July 2020.

LI 2020/151: *Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2019–20 Income Year) Order 2020* (NZ)

The Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2019–20 Income Year) Order 2020 sets, for the 2019–20 income year, the deemed rate of return used to calculate foreign investment fund income under the calculation method set out in *Income Tax Act 2007* (NZ) s EX 55.

The deemed rate of return for the 2019–20 income year is set at 5.05%. (The deemed rate of return set for the 2018–19 income year was 5.86 per cent.)

The new rate applies from 10 July 2020.

LI 2020/128: *Tax Administration (Direct Credit of Refunds of Amounts in Income Equalisation Accounts and Environmental Restoration Accounts) Order 2020* (NZ)

The Tax Administration (Direct Credit of Refunds of Amounts in Income Equalisation Accounts and Environmental Restoration Accounts) Order 2020 specifies 23 July 2020 as the date on and from which the following types of tax may be refunded by direct credit under section 184A of the *Tax Administration Act 1994* (NZ) s 184A to a bank account nominated by the taxpayer entitled to the refund an amount in an:

- income equalisation account; or
- environmental restoration account.

Jonathan Barrett

## 07 | CALL FOR SUBMISSIONS

### Australian Accounting Standards Board

[Research Forum](#)

**Ranking:** N/A

**Manuscripts Submission Deadline:** 21 July 2020

**Publication Date:** TBA

The Australian Accounting Standards Board is currently accepting expressions of interest from researchers for next year's Research Forum. The AASB Research Forum is an annual event where timely and topical academic research in relation to financial reporting is presented before an audience of key industry stakeholders. The forum usually consists of three presenting academic research teams, a panel of industry executives who provide live feedback and discussions, and questions from the audience.

The AASB wants academics to make practical recommendations for standard-setters and encourages them to be bold in their recommendations. Your findings have the power to influence tomorrow's decisions for the greater benefit of the International and Australian accounting industry and economy.

Authors will also benefit from the AASB's publication relationship with academic journals including *Accounting and Finance*, which has published studies from previous research forums, and *Australian Accounting Review* which welcomes academic research for practitioners.

Expressions of interest should be submitted no later than 5.00pm, Tuesday 21 July 2020 to the AASB Research Centre via [research@aab.gov.au](mailto:research@aab.gov.au). Submissions after this date will be considered on a discretionary basis

### Curtin Law and Taxation Review

Volume VI

**Ranking:** TBA

**Manuscripts Submission Deadline:** 31 August 2020

**Publication Date:** December 2020

The Editorial Board of the Curtin Law and Taxation Review (CLTR) invites contributions from academic staff, legal scholars, practitioners, justice professionals and postgraduate researchers for possible publication in the 2020 issue of the CLTR.

The CLTR is a general law journal which also publishes articles that deal with taxation law and practice. The 2020 editorial team plans to publish between 8 and 10 articles, book reviews and case notes in the forthcoming issue.

A competitive editorial policy will apply to the selection of articles. The CLTR satisfies the requirements to be regarded as peer reviewed as contained in the current Higher Education Research Data Collection (HERDC) Specifications (C1 Category).

Articles should be up to 10,000 words in length (maximum), including footnotes. Authors should note that CLTR has adopted the [Australian Guide to Legal Citation 4th edition](#) as its preferred referencing convention.

Please submit articles for this issue via email to Donovan Castelyn, Editorial Lead of the CLTR at [donovan.castelyn@curtin.edu.au](mailto:donovan.castelyn@curtin.edu.au) by Monday 31 August 2020.

**Austaxpolicy.com Blog (Tax and Transfer Policy Institute)**  
[TTPI Working Papers and Policy Briefs](#)

**Ranking:** N/A  
**Manuscripts Submission Deadline:** Continually  
**Publication Date:** Continually

*tax.policy@anu.edu.au*

## 08 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

<p style="text-align: center;"><a href="#"><u>14th International Conference on Tax Administration</u></a></p> <p><b>Provisional Date:</b> 3-4 November 2020  <b>Location:</b> Sydney and Online  <b>Cost:</b> \$165 - \$1,035  <b>Theme:</b> New Frontiers in Tax Administration</p> <p>We will be back in touch to confirm the conference is going ahead and open registrations. We will also confirm at that time if there is a limited opportunity to add some new papers to our program on the experience of responding to the pandemic.</p> <p>Presenters please note we will be in touch to advise you of the new deadline for papers in case you want to refresh yours to take account of recent extraordinary developments!</p> <p>Please hold the dates so you can join us to hear from leading academics, policy makers and practitioners about current and future global trends.</p>	<p style="text-align: center;"><a href="#"><u>International Fiscal Association Webinar</u></a></p> <p><b>Date:</b> 27 July 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> Australian Foreign Investment Reforms</p>
<p style="text-align: center;"><b>Melbourne Law School Tax Research Seminars Online</b></p> <p>Melbourne Law School will host a regular tax research seminar online series starting in July 2020. We hope to continue the series into 2021 and hopefully beyond, if there is interest, to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the region. Papers will be circulated to registered participants ahead of time. The usual format will be a presentation of a paper for about 25 to 30 minutes, comments from a discussant and then ample time for questions and discussion. The seminar will be run online as a Zoom meeting, not a webinar, to enable discussion. Participants will need to register for the seminar ahead of time to receive the zoom password, link and paper. Dates for 2020 seminars are below:</p> <ul style="list-style-type: none"> <li>• 30 July 2020: Dr Daniel Halliday, University of Melbourne, Tax and the Inheritance of Wealth</li> <li>• 27 August 2020: Professor Craig Elliffe, Auckland University, International Tax Frameworks: Assessing the 2020 Compromise</li> <li>• 18 September 2020</li> <li>• 29 October 2020</li> <li>• 26 November 2020</li> </ul>	<p style="text-align: center;"><b>Inaugural Tax Special Interest Group</b></p> <p>Scheduled to be held at AFAANZ Conference planned for Melbourne in 2020 has been cancelled and postponed until 2021.</p>
<p style="text-align: center;"><a href="#"><u>The Tax Institute</u></a></p>	<p style="text-align: center;"><b>2021 ATTA Conference</b></p> <p>More information on pages 2 and 3 of this edition of ATTA News.</p>
	<p style="text-align: center;"><a href="#"><u>Melbourne Law School Tax Research Seminar, July</u></a></p> <p><b>Date:</b> 30 July 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> Tax and the Inheritance of Wealth</p>
	<p style="text-align: center;"><a href="#"><u>Melbourne Law School Tax Group Webinar</u></a></p> <p><b>Date:</b> 11 August 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> Reforming Tax Sharing in the Federation</p>
	<p style="text-align: center;"><a href="#"><u>Law Council of Australia</u></a></p>
	<p style="text-align: center;"><a href="#"><u>Australian Conference Alerts</u></a></p>

## International

Various international events happening in the foreseeable future are listed below.

<p><a href="#"><u>21st Global Conference on Environmental Taxation</u></a></p> <p><b>Date:</b> 24-25 September 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> Environmental Taxation in an Era of COVID-19</p>	<p><a href="#"><u>International Fiscal Association Virtual Program</u></a></p> <p><b>Date:</b> 16-25 November 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> TBA</p>	<p><a href="#"><u>5th International Taxpayer Rights Conference</u></a></p> <p><b>Date:</b> Postponed to 6-7 October 2021  <b>Location:</b> Pretoria, South Africa  <b>Cost:</b> USD\$325  <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries</p>
<p><a href="#"><u>International Fiscal Association Congress</u></a></p> <p><b>Date:</b> Postponed to 10-15 September 2022  <b>Location:</b> Cancun, Mexico  <b>Cost:</b> Unknown  <b>Theme:</b> TBA</p>	<p><a href="#"><u>Canadian Tax Foundation</u></a></p>	<p><a href="#"><u>Institute for Fiscal Studies</u></a></p>
	<p><a href="#"><u>Institute for Austrian and International Tax Law</u></a></p>	<p><a href="#"><u>International Bureau of Fiscal Documentation</u></a></p>
	<p><a href="#"><u>International Fiscal Association</u></a></p>	<p><a href="#"><u>International Tax Planning Association</u></a></p>
<p><a href="#"><u>International Bar Association</u></a></p>	<p><a href="#"><u>International Events and Law Conferences</u></a></p>	<p><a href="#"><u>Practising Law Institute</u></a></p>
<p><a href="#"><u>American Bar Association</u></a></p>	<p><a href="#"><u>New York Bar Association</u></a></p>	<p><a href="#"><u>Hieros Gamos Worldwide Law Events</u></a></p>



## 09 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages. Italics indicate ATTA members.

### Domestic

#### The Conversation

ATTA Member contribution(s)

- *Dale Boccabella* - '[Be careful what you claim for when working from home. There are capital gains tax risks](#)', 30 June 2020
- *Neil Warren* - '[Memo to Australia's states: try renovating your tax system before asking for a new one](#)', 6 July 2020

Articles of Interest

- Isaac Gross - 'Australia needs a six-month GST holiday', 7 July 2020
- Richard Holden - 'Vital Signs: Stamp duty is an economic drag. Here's how to move to a better system', 3 July 2020

#### Bulletin for International Taxation

[2020 | Volume 74 | Issue 7](#)

ATTA Member contribution(s)

- *Andrew MC Smith* - 'China (People's Rep.)/New Zealand/OECD - The New China-New Zealand Income Tax Treaty (2019) – How Does It Shape Up Following the BEPS Project and the MLI?'

#### Tax and Transfer Policy Institute

[Austaxpolicy.com Blog](#)

ATTA Member contribution(s)

- *Rodney Brown, Youngdeok Lim and Chris Evans* - '[The Impact of Full Franking Credit Refundability on Corporate Tax Avoidance](#)', 22 June 2020
- *Christine Peacock* - '[Including Resales of Residential Premises in the GST Base](#)', 6 July 2020

Articles of Interest

- Cameron Chisholm - 'Understanding how behavioural assumptions are accounted for in policy costings: The Parliamentary Budget Office's approach', 17 June 2020
- Robert Breunig and Timothy Watson - 'Strengthening JobKeeper', 24 June 2020
- John Hewson - 'Take it from one who's been burnt attempting tax reform: Now's the time to try again', 26 June 2020
- Nazila Alinaghi, John Creedy and Norman Gemmill - 'Do couples bunch more? Evidence from partnered and single taxpayers in New Zealand', 30 June 2020
- Luke McKenzie, Chris Hoy and Mathias Sinning - 'Can Sharing the Joy of Tax Increase Government Revenue in PNG?', 2 July 2020

#### New Zealand Journal of Taxation Law & Policy

[2020 | Volume 26 | Issue 2](#)

ATTA Member contribution(s)

- *Adrian Sawyer and Lin Mei Tan* - 'Editorial'
- *Nthathi Rametse, Appadu Santhariah, Tshepiso Makara and Ken Devos* - 'Estimating Start-up Compliance Costs of the Malaysian Goods and Services Tax for Small- and Medium-sized Enterprises'
- *Victoria Plekhanova* - 'Surviving the Digital Tax Storm: Options for New Zealand'

Other Articles:

- David Sutton - 'Downsizing Inland Revenue: [A] time of great change, challenge and opportunity or a Process Driven by Ideology'
- Michael Hansby - 'Tax Measures in Treaty Jurisprudence: Insights for State Sovereignty under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership'

#### Australian Tax Forum

[2020 | Volume 35 | Issue 2](#)

ATTA Member contribution(s)

- *Ann Kayis-Kumar, Chris Evans and Youngdeok Lim* - 'To cap or not to cap? Policy options for dealing with the costs of managing tax affairs deduction in Australia'
- *John Bevacqua* - 'Suing negligent Australian tax officials - recent judicial developments & possible future directions'
- *Monica Costa, Helen Hodgson, Siobhan Austen and Rhonda Sharp* - 'Promoting and protecting the economic outcomes of older partnered women and widows: challenges for Australia's retirement income system'

Other Articles:

- Enrico Mercuri and Jared Birbeck - 'Fostering Australian R&D activity through industry-university collaboration'
- Christine Brown and Kevin Davis - 'Tax-driven off-market buybacks (TOMBs): time to lay them to rest'

#### Other ATTA Member Articles

- *Craig Macfarlane Elliffe* - '[Submission on the proposed Unified Approach to Pillar One](#)', 12 November 2019

#### New South Wales Treasury

- '[NSW Review of Federal Financial Relations: Supporting the road to recovery](#)', July 2020



### Australian Tax Review

[2020 | Volume 49 | Issue 1](#)

ATTA Member contribution(s)

- *Keirrie Sadiq and Dale Pinto* - 'Editorial: Oh, What a Beginning to 2020'
- *John Bevacqua* - 'Taxpayer Attitudinal Responses to Tax Audits – Strategic Implications of Recent Findings from the United States'

Other Articles:

- KE Powell - 'Preventing Pension Double Taxation: The Treatment of Australian Superannuation Guarantee under the Existing Australia-US Tax Treaty'
- Rami Hanegbi - 'When Is There an "Adventure or Concern in the Nature of Trade" for GST Purposes?'

### International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

### British Tax Review

[2020 | Volume 73 | Issue 2](#)

ATTA Member Contributions:

- *Jonathan Barrett* - 'On Artworks as Merit Goods for Tax Purposes'
- *Amir Pichhadze* - 'Transfer Pricing and the Arm's Length Principle After BEPS (OUP, 2017) by RS Collier and JL Andrus'

Current Notes:

- Chris Whitehouse - 'The Office of Tax Simplification's second inheritance tax report'
- Karolis Matikonis - 'Unintended recipients of rising UK non-domestic property tax reliefs'

Case Notes

- Rachael O'Connor - 'Aozora v HMRC: guidance and legitimate expectations—a losing battle?'
- Emma Chamberlain - 'Buzzoni v HMRC and Lady Hood v HMRC: a reservation too far?'
- Johann Hattingh and Afton Titus - 'Sasol Oil v CSARS: judicial reinterpretation of legal doctrine to address tax avoidance in South Africa'

Articles

- Emma Chamberlain - 'Reform of Inheritance Tax'
- Svea Holtmann - 'Tax Avoidance Using Hybrid Financial Instruments Among European Countries'

Book Reviews

- Francesco Cannas - 'Taxing Robots: Helping the Economy to Adapt to the Use of Artificial Intelligence (Edward Elgar, 2019) by X Oberson'
- Christiana HJI Panayi - 'EU Law and the Building of Global Supranational Tax Law: EU BEPS and State Aid (IBFD, 2017) by D. Weber (ed.)'
- Christiana HJI Panayi - 'Time and Tax: Issues in International, EU, and Constitutional Law (Kluwer, 2018) by W Haslehner, G Kofler and A Rust (eds)'

### Other Publications

ATTA Member Contributions:

- *Rebecca Millar* - 'Contributions comparing the Australian and EU approaches to Abuse of Law (anti-avoidance) and fraud/ evasion and Comments on the existence and application of the Ne Bis in Idem Principle in Australian taxation law'
- *Rebecca Millar* - 'VAT grouping and cost-sharing: An Australian Perspective. In K. K. E. Elgaard et al (Eds.), VAT grouping and cost-sharing: a critical and constructive perspective' (Forthcoming)

Other Publications of Interest

- Michael Lang, Pasquale Pistone, Alexander Rust, Josef Schuch, Claus Staringer and Alfred Storck (eds) - 'CJEU - Recent developments in direct taxation 2019'

### Other Newspaper Articles of Interest

ABC News

- Nassim Khadem - '[Google Australia pays more tax, but still makes billions on local sales counted in Singapore](#)', 18 May 2020
- Nassim Khadem - '[Alcoa threatens to battle the Australian Taxation Office in court over a tax bill that could top \\$1 billion](#)', 8 July 2020
- Nassim Khadem - '[How a digital death certificate could help sort out estate and tax matters when you pass](#)', 8 July 2020

Sydney Morning Herald

- Jessica Irvine - '[What Ken Henry really thinks about tax reform](#)', 4 July 2020
- Anna Patty - '[UTS loses application to appeal against reinstatement of academic sacked for not publishing enough research](#)', 9 July 2020

## 10 | QUOTABLE QUOTES

““We all know...huh.” Henry pauses. “Well,” he corrects himself, “we’ve all been told for long enough what needs to be done. We don’t need another review. We need agreement and political commitment. That’s all we need. And the national cabinet - that’s an appropriate body to be able to take those decisions. The question is whether there is a political will?”

*Jessica Irvine*

Read more here: [Sydney Morning Herald](#)

“The ATO often hits companies with tax bills, but later decides to settle rather than fight for the money in court.

For example, the ATO said in 2017-18 it hit “large corporate groups” with \$3.7 billion in tax assessments but ended up collecting \$2.86 billion in cash (including interest and penalties) after audits.

Ms Saint said the ATO was very careful about which cases it litigated, and any settlements with large corporations were checked by retired Federal Court judges to ensure they were appropriate.”

*Nassim Khadem*

Read more here: [ABC News](#)

“My main mistake as opposition leader in advocating broad-based tax reform in the early 1990s – as a key element of the Coalition’s Fightback campaign for broad government reform – was to misread the politics.

I assumed that Paul Keating could be held to his word, particularly his public support for a consumption tax after his “option c” – defined by a 12.5 per cent consumption tax – had been scuttled by a motel room deal between Bob Hawke and ACTU leader Bill Kelty. Keating had said in a subsequent press conference: “I have always believed that an across-the-board, broad-based consumption tax was the best tax option for achieving major reform of the Australian tax system” – a view I assumed he held passionately.

Naively, I hadn’t expected that he would so easily reverse that position and run a scare campaign against the tax as the basis for “doing Hewson slowly”. Nor had I recognised that, to him, and I quote what he subsequently said to me, “politics is just a game, and I will say or do whatever I have to, to win”.

Sure, I also helped with answers about the price of birthday cakes, attempting to demonstrate the complexity of the sales tax system to be replaced by a simpler GST. But this emphasised the need for a wide and informed public debate to overcome scare campaigns and to convince the electorate of the need for tax reform as a precondition to an effective overall reform agenda.

... However, perhaps it would be better to be more innovative by ditching the GST and replacing it with a business cash-flow tax, in the style proposed by former Treasury secretary Ken Henry. This would also allow a move away from profit-based corporate tax – and to begin to tax the multinationals. And it would provide revenue to abolish inefficient state taxes such as payroll and insurance levies.”

*John Hewson*

Read more here: [Austaxpolicy blog](#)



## ISSUE HIGHLIGHTS

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"I believe we should all pay our tax bill with a smile. I tried but they wanted cash."

- *Anonymous*

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## 01 | PRESIDENTIAL COLUMN

### President's Note

Kia ora koutou and welcome to the August newsletter.

I know a lot of our members are facing challenging times right now, so I am delighted to start this column with some positive news. Thanks to Annette Morgan at Curtin University and her colleague Stephanie Bruce we have a fantastic new standalone ATTA website. Here is the link: [www.atta.network](http://www.atta.network)

Many thanks to our colleagues at UNSW for supporting the previous website over the past few years. The move to our own website gives us several advantages, including greater flexibility with content, as well as one source for all ATTA materials including

communications, conference details, conference papers and JATTA. Any feedback on the website is welcome – please email me and Annette with any comments or thoughts ([lisa.marriott@vuw.ac.nz](mailto:lisa.marriott@vuw.ac.nz) and [annette.morgan@cbs.curtin.edu.au](mailto:annette.morgan@cbs.curtin.edu.au)). If you know of any websites that include a link to the UNSW website for ATTA or JATTA, please let me know and we will arrange to have these updated.

As previously mentioned, our colleagues at the University of Canterbury will run a one-day symposium in January 2021. As yet, we have not received any expressions of interest in running a similar event in Australia. There is still time to let Adrian and me know if you would



like to host an Australian symposium ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz) and [lisa.marriott@vuw.ac.nz](mailto:lisa.marriott@vuw.ac.nz)).

With best wishes

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

Both the ATTA 2021 conference organising committee and the ATTA Executive have reached the unprecedented decision that we are postponing the January 2021 conference to 19-21 January 2022 (equivalent dates) due to the impact of COVID-19. The decision comes with a background of borders being closed and likely at best to open to Australia only (meaning a large portion of our attendees from outside the region could not come), and with many academics and graduate students facing reduced conference budgets and thus being unable to attend.

*Adrian Sawyer*

## 03 | ATTA 2021 SYMPOSIUM SUGGESTION

The full formal ATTA conference to be held in Christchurch in January 2021 will now be postponed until January 2022. In an attempt to provide a feeling of collegiality and continuity to the ATTA community it is suggested that a one day symposium be held both in New Zealand and Australia. This would in particular provide an opportunity for PhD students within our discipline to present their ongoing research and receive valuable feedback. There would be no particular 'theme' to the symposium so all papers are welcome.

The proposed symposium will be held in lieu of the official ATTA conference. One suggestion is to hold a one day symposium at the University of Canterbury, with potentially a similar one day event in Australia. Expressions of interest are welcome for someone in Brisbane, Melbourne or Sydney to host a symposium. The symposiums could be run on different days with the opportunity to have people either 'Zoom' in to the sessions or attend in person. There would be no concurrent sessions.

### Abstracts

Abstracts only would be required prior to the event to put together a programme. There would be no formal review of papers. Abstracts would be required by 30 November 2020.

### Symposium Dates Suggested

The dates tentatively being considered would be around the usual ATTA conference time, with perhaps the New Zealand symposium being held on Wednesday 20 January 2021 and the Australian symposium, should one go ahead, on Thursday 21 January.



*Cost*

The University of Canterbury has expressed willingness to host the NZ symposium. We anticipate a small cost for those attending in person to cover catering expenses.

*Tentative Day Programme*

- Welcome
- Morning Presentations (with a morning tea break) 9am to 12 noon
- Lunch and mingling (1 metre apart) 12 noon to 1pm
- Afternoon Presentations (with an afternoon tea break) 1pm to 5pm
- Social Event and Dinner 6pm (for those attending in person)

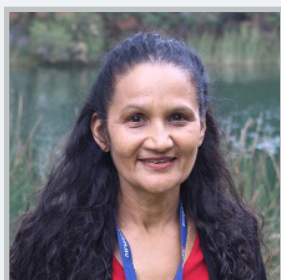
*Presentations*

The usual 20 to 25 minutes presentation with up to 10 minutes for comments/questions.

Feedback from the ATTA community is sought as to whether this would be of interest to proceed. Please email your views to Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz)), and Lisa Marriott ([Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)) by 6 September 2020.

## 04 | ARRIVALS, DEPARTURES AND HONOURS

### Welcome and Honours



Dr Prafula Pearce joined Edith Cowan University as Associate Professor - Law in June 2020. She comes from an academic background, having worked at Curtin Law and Curtin Business School from 1996 to 2020. Prior to joining Curtin University, Prafula has worked in both London and Perth, in large commercial organisations such as Cadbury Schweppes and Bond Corporation, and in accounting firms such as Deloitte.

Prafula is a fellow of CPA Australia, a fellow of the Chartered Association of Certified Accountants in England and Wales and a Chartered Tax Adviser. In addition, she attained the Bachelor of Laws degree from the UK in 1983, a Masters of Law degree from the University of Western Australia in 1998 and a PhD from Curtin University in 2012.

Prafula’s research is mainly in the area of law, policy and taxation. Since the attainment of her PhD in 2012, her research focus has been in the area of tax and regulatory measures to promote sustainable energy use. She has presented papers at national and global conferences and has published widely in highly ranked national and international journals and has made submissions to Federal Government inquiries to influence policies. Her current research interest in promoting environmental sustainability through tax policy also requires liaison with the community and professional associations.



Congratulations to Dr AR (Lex) Fullarton for starting a new position as Reviewer Academic Papers at Journal of Australian Taxation.



Terry Murphy QC has been a Senior Fellow at the Melbourne Law School, leading our advanced Melbourne Law Masters subject, Taxation of Trusts, for more than a decade. Terry comments, “Thank God for trusts – otherwise I’d have to get a real job!” More seriously, we’d like to thank Terry for his extraordinary commitment to our program, as the Chair of our Tax Advisory Board and leader of our MLS Tax Discussion Group. Terry is a renowned tax advisor and litigator at the Victorian

Bar, with more than 30 years of experience advising and appearing for taxpayers and revenue authorities in superior Courts. From 2008 to 2010, Terry was appointed as Special Counsel to the Australian Taxation Office. Terry is passionate about ongoing education for all legal and other practitioners, especially in tax, and he values the dedication, enthusiasm and innovative approach of students and faculty at the Law School.

## 05 | BULLETIN BOARD

### **ATTA Website and G Drive**

Dear ATTA members,

Please note that in addition to the new [ATTA website](#), we have also created a publicly accessible [ATTA Google Drive](#) (G Drive) for ATTA members. The ATTA G Drive can be accessed via the 'Resources' tab of the new ATTA website.

At present, the G Drive hosts conference photos from the past few years and it is envisaged that overtime, the G Drive will be used to disseminate conference papers as well as agenda items/ minutes and any other important information.

We encourage you to kindly forward any conference photos or documents that you might have which would be appropriate to share with other ATTA members.

Photos and documents should be emailed to [Annette Morgan](#).

Kind regards

Stephanie Bruce

### **Tax Prizes and Awards**

#### [Forsyth Pose Scholarship](#)

The scholarship is offered by the Business Law Section for the Law Council of Australia and will be awarded to the writer of a publishable quality paper on a topic of relevance to taxation law practitioners.

**Maximum Award:** \$5,000

**Closing Date:** 31 August 2020

#### [Baxt Prize](#)

The Law Council of Australia invites entries for the Baxt prize. This recognises a journal article on a topic related to Australian trade practice, corporate law or taxation law published by an eligible author in a qualifying journal between 1 July 2019-30 June 2020. Entrants must have been under the age of 35 on 30 June 2020.

**Maximum Award:** \$7,500

**Closing Date:** 31 August 2020

### **Shaping the Future of Digitalization: the New LL.M. Program in Digitalization and Tax Law**

Dear Colleagues,

The Institute for Austrian and International Tax Law, WU would like take this opportunity and introduce you again to the new LL.M. program organized by the WU Executive Academy.

Digitalization is changing the corporate world to a massive extent. Professions concerned with taxes and tax law are now called upon to rethink their practices. The required changes, however, pose a great challenge to many businesses. From October 2020, experts can acquire the skill set needed to stay on top of the existing possibilities to use technological innovations in tax law to further reduce costs and facilitate processes in the new [LL.M. Digitalization and Tax Law](#) of the WU Executive Academy.

The new program was masterminded by two WU professors, Jan Mendling of the Department of Information Systems & Operations and Alexander Rust of the Institute for Austrian and International Tax Law, in cooperation with Robert Risse, who is considered one of the leading tax law experts in the German-speaking area. Risse, who has served as Corporate Vice President Tax & Trade at Henkel AG in Dusseldorf since 2000, is mostly in charge of the program's practice-oriented components.

"Digitalization and tax law are currently high-priority topics for many companies. Our program's outstanding quality, both with regard to theory and practice, can make a real difference and offer a unique added value to participants they will find nowhere else," Alexander Rust

If you're interested in this program and want to know more about start, duration and content [click here](#).

Kind regards,

Michael Lang, Alexander Rust, Josef Schuch, Karoline Spies, Claus Staringer, Pasquale Pistone, Alfred Storck, Jeffrey Owens and Robert Risse

### **Do you have a Bulletin Board item?**

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

## Vacancies

### Lecturer/Assistant Professor/Associate Professor of Accounting

- **Posting Number:** F29P
- **Location:** Halifax, Canada
- **Position Type:** Tenure Stream
- **Closing Date:** 31 August 2020

The [Rowe School of Business](#) (RSB) [[Dalhousie University](#)] invites applications for a probationary tenure-track or tenure-track appointment in Accounting at the rank of Lecturer, Assistant or Associate Professor (dependent upon qualifications and experience), commencing July 1, 2021 (negotiable).

## ATTA News Publishing Deadlines

Please note the following dates are approximate.

### September Edition of ATTA News

- Items to the Editor by: 14 September 2020
- Publicly available on: 21 September 2020

### October Edition of ATTA News

- Items to the Editor by: 13 October 2020
- Publicly available on: 20 October 2020

### November Edition of ATTA News

- Items to the Editor by: 13 November 2020
- Publicly available on: 20 November 2020

### December Edition of ATTA News

- Items to the Editor by: 11 December 2020
- Publicly available on: 18 December 2020

## 06 | ATTA PEOPLE IN THE MEDIA



*Jonathan Barrett*

- Interview with Jesse Mulligan, 'Afternoons with Jesse Mulligan', Radio NZ (3 August 2020, 13.25)
- Interview with Heather Du Plessis Allen, 'Drive Show', Newstalk ZB (3 August 2020, 17.20)



*Lex Fullarton*

- On 27 July 2020, Lex took part in a [live streaming event](#) conducted by the Sustainable Energy Now Group. The event focussed on the roll out of electric motors vehicles in Australia and what can be done to encourage the transition towards them. Lex focussed on the myth that electric vehicles endanger the collection of road tax revenue and therefore funding for the upkeep of Australia's roadways



*Anna Mortimore*

- Anna appeared in the following video on electric vehicles. David Fanner - '[The Green Recovery: how to put more electric vehicles on Australia's roads – video](#)', 3.34



## 07 | TAX LAW DEVELOPMENTS

### Australia

#### Federal Court of Australia

##### [Commissioner of Taxation v Addy \[2020\] FCAFC 135](#)

Davies, Derrington, Steward JJ – 6 August 2020

#### Catchwords:

- Taxation – Australia and United Kingdom double taxation treaty Art 25 – non-discrimination clause – working holiday makers – where respondent a citizen of United Kingdom and holder of a working holiday visa – where respondent taxed at working holiday maker rate in Pt III of Sch 7 of the Income Tax Rates Act 1986 (Cth) on income earned in Australia – whether working holiday maker rate infringes Art 25 of Australia and United Kingdom double taxation treaty – construction of non-discrimination clause – whether respondent subjected to more burdensome taxation by reason of her nationality – taxation rate based on visa held rather than nationality – appeal allowed
- Taxation – whether respondent a resident of Australia for tax purposes – definition of “resident” in s 6 of Income Tax Assessment Act 1936 (Cth) – respondent not a resident under “ordinary concepts test” – application of “183 day test” – whether Court can substitute own state of satisfaction in place of Commissioner’s state of satisfaction as to “usual place of abode” outside Australia – role of the Court limited to determining whether Commissioner had lawfully attained state of satisfaction – *Kolotex Pty Ltd v Commissioner of Taxation (1975) 132 CLR 535* considered – on facts of case Commissioner had not reached state of satisfaction – respondent was a resident by application of objective element of 183 day test

#### The court orders that:

1. The appeal be allowed.
2. The cross-appeal be dismissed.
3. Orders 2 to 6 of the orders made by the learned primary judge on 30 October 2019 be set aside and in lieu thereof the respondent’s appeal from the appellant’s objection decision of 26 February 2018 be dismissed.

There be no order as to costs.

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##### [The Buddhist Society of Western Australia Inc v Commissioner of Taxation \[2020\] FCA 1126](#)

McKerracher J – 6 August 2020

#### Catchwords:

- Taxation - appeal of an objection decision under Pt IVC of the *Taxation Administration Act 1953* (Cth) – where originating application also seeks judicial review of the same decision under s 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) – where the decision is not captured by Sch 1 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) – whether the Court’s statutory jurisdiction to review the decision under both Acts can be invoked in a single proceeding – whether originating application should be set aside or amended – case management considerations

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##### [Commissioner of Taxation v Bogiatto \[2020\] FCA 1139](#)

Thawley J – 7 August 2020

#### Catchwords:

- Taxation - whether respondents engaged in conduct that resulted in them or another entity being a promoter of tax exploitation schemes in breach of s 290-50(1) of Sch 1 of the *Taxation Administration Act 1953* (Cth) – where over 20 alleged tax exploitation schemes involving 14 taxpayers – where taxpayers made research and development claims under Div 355 of the *Income Tax Assessment Act 1997* (Cth) – whether respondents were promoters within the meaning of s 290-60(1) of Sch1 – whether there were tax exploitation schemes within the meaning of s 290-65(1) of Sch 1 – whether respondents received scheme benefits within the meaning of s 284-150(1) of Sch 1 – meaning of tax evasion in s 290-55(6) of Sch 1 – contraventions of s 290-50(1) of Sch 1 established in respect of schemes involving 13 taxpayers – applications regarding some contraventions statute barred

#### The court orders that:

1. The applicant file within 14 days short minutes of order giving effect to these reasons for judgment.

The proceeding be listed for a case management hearing at 9 am on 27 August 2020

[Auctus Resources Pty Ltd v Commissioner of Taxation \[2020\] FCA 1096](#)

Steward J – 31 July 2020

Catchwords:

- Taxation – relief under s 39B of the *Judiciary Act 1903* (Cth) – where taxpayer made application to register resource extraction research project as a research and development activity the purposes of s 27A of the *Industry Research and Development Act 1986* (Cth) – where Innovation and Science Australia registered project as a research and development activity under s 27J – where taxpayer subsequently claimed research and development tax offset refunds in its tax return for 2013 year of income – where amount paid by Commissioner to taxpayer following claim for refunds – where Innovation and Science Australia subsequently reviewed project and found that none of the associated activities constituted core or supporting research and development activities – where Commissioner issued notice under s 8AAZN of the *Taxation Administration Act 1953* (Cth) requiring repayment of a purported administrative overpayment, being the refund paid to the taxpayer – where taxpayer did not dispute during proceedings that it was not in fact carrying out core or supporting research and development activities – whether Commissioner entitled to repayment of the refund pursuant to s 8AAZN

The court orders that:

1. The parties are to confer and, if agreement can be reached, provide the Court with orders for final relief within 14 days hereof, or failing that, each party shall file written submissions on the issue of the form of final relief limited to four pages in length.

*Supriya Eliezer and Colin Fong*

## 08 | CALL FOR SUBMISSIONS

### **Curtin Law and Taxation Review**

[Volume VI](#)

**Ranking:** TBA

**Manuscripts Submission Deadline:** 31 August 2020

**Publication Date:** December 2020

The Editorial Board of the Curtin Law and Taxation Review (CLTR) invites contributions from academic staff, legal scholars, practitioners, justice professionals and postgraduate researchers for possible publication in the 2020 issue of the CLTR.

The CLTR is a general law journal which also publishes articles that deal with taxation law and practice. The 2020 editorial team plans to publish between 8 and 10 articles, book reviews and case notes in the forthcoming issue.

A competitive editorial policy will apply to the selection of articles. The CLTR satisfies the requirements to be regarded as peer reviewed as contained in the current Higher Education Research Data Collection (HERDC) Specifications (C1 Category).

Articles should be up to 10,000 words in length (maximum), including footnotes. Authors should note that CLTR has adopted the [Australian Guide to Legal Citation 4th edition](#) as its preferred referencing convention.

Please submit articles for this issue via email to Donovan Castelyn, Editorial Lead of the CLTR at [donovan.castelyn@curtin.edu.au](mailto:donovan.castelyn@curtin.edu.au) by Monday 31 August 2020.

### **World Customs Organisation’s PICARD Conference**

[Edition 15](#)

**Ranking:** TBA

**Manuscripts Submission Deadline:** 7 September 2020

**Publication Date:** TBA

The 15th edition of the World Customs Organisation’s PICARD Conference will take place as a ‘Web Conference’ from 23 to 26 November 2020. The Conference will focus on the presentation of research and policy analysis by practitioners and academics.

This year’s Call for Papers was disseminated in June 2020, and invites practitioners, academics and anyone with a keen interest in Customs to submit research on one of the following topics (non-exhaustive list):

- Lessons learned regarding Customs’ response and role in supply chain continuity during the COVID-19 pandemic;
- Customs fostering Sustainability for People, Prosperity and the Planet; and
- Organisational Performance Measurement.

In addition to the authors selected based on the aforementioned Call for Papers, authors of the papers selected for the World Customs Journal special edition 2020, which will feature the topic of “the WCO and Customs and trade community: past and future”, will also be invited to this Conference.

**Austaxpolicy.com Blog (Tax and Transfer Policy Institute)**  
[TTPI Working Papers and Policy Briefs](#)

**Ranking:** N/A  
**Manuscripts Submission Deadline:** Continually  
**Publication Date:** Continually

[tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au)

## 09 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

#### 14th International Conference on Tax Administration

**Provisional Date:** 3-4 November 2020

**Location:** Sydney and Online

**Cost:** \$165 - \$1,035

**Theme:** New Frontiers in Tax Administration

We will be back in touch to confirm the conference is going ahead and open registrations. We will also confirm at that time if there is a limited opportunity to add some new papers to our program on the experience of responding to the pandemic.

Presenters please note we will be in touch to advise you of the new deadline for papers in case you want to refresh yours to take account of recent extraordinary developments!

Please hold the dates so you can join us to hear from leading academics, policy makers and practitioners about current and future global trends.

#### National Superannuation Online Conference

**Provisional Date:** 10-11 September 2020

**Location:** Online AEST

**Cost:** TBA

**Theme:** TBA

#### **2021 ATTA Conference**

More information on pages 2 and 3 of this edition of ATTA News.

#### **Melbourne Law School Tax Research Seminars Online**

Melbourne Law School will host a regular tax research seminar online series starting in July 2020. We hope to continue the series into 2021 and hopefully beyond, if there is interest, to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the region. Papers will be circulated to registered participants ahead of time. The usual format will be a presentation of a paper for about 25 to 30 minutes, comments from a discussant and then ample time for questions and discussion. The seminar will be run online as a Zoom meeting, not a webinar, to enable discussion. Participants will need to register for the seminar ahead of time to receive the zoom password, link and paper. Dates and topics for 2020 seminars are below:

- 27 August 2020: Professor Craig Elliffe, Auckland University, 'International Tax Frameworks: Assessing the 2020 Compromise'
- 17 September 2020: Adjunct Professor Richard Highfield, UNSW, 'Diagnosing the VAT Compliance Burden: A Cross-Country Assessment'
- 29 October 2020: Dr Ann Kayis-Kumar, UNSW, 'Pro Bono Tax Clinics: An International Comparison and Framework for Evidence-based Evaluation', with Discussant Ms Kate Fischer-Doherty, Director of Melbourne Law School Clinics
- 26 November 2020: TBA

If you are interested in attending these events please email [law-tax@unimelb.edu.au](mailto:law-tax@unimelb.edu.au)

#### **University of Melbourne Semester 2 Tax Subjects**

Limited spaces are still available for the following subjects. Please [register](#) early to ensure your space.

- 18-24 November 2020: [Income Tax Compliance and Enforcement](#) taught by Professor Emeritus Arie Freiberg
- 2-8 December 2020: [Comparative International Tax](#) taught by Professor Kim Brooks

[The Tax Institute](#)

[Law Council of Australia](#)

[Australian Conference Alerts](#)

## International

Various international events happening in the foreseeable future are listed below.

<p><a href="#"><u>21st Global Conference on Environmental Taxation</u></a></p> <p><b>Date:</b> 24-25 September 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> Environmental Taxation in an Era of COVID-19</p>	<p><a href="#"><u>International Fiscal Association Virtual Program</u></a></p> <p><b>Date:</b> 18-25 November 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> TBA</p>	<p><a href="#"><u>5th International Taxpayer Rights Conference</u></a></p> <p><b>Date:</b> Postponed to 6-7 October 2021  <b>Location:</b> Pretoria, South Africa  <b>Cost:</b> USD\$325  <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries</p>
<p><a href="#"><u>International Fiscal Association Congress</u></a></p> <p><b>Date:</b> Postponed to 10-15 September 2022  <b>Location:</b> Cancun, Mexico  <b>Cost:</b> Unknown  <b>Theme:</b> TBA</p>	<p><a href="#"><u>Canadian Tax Foundation</u></a></p>	<p><a href="#"><u>Institute for Fiscal Studies</u></a></p>
	<p><a href="#"><u>Institute for Austrian and International Tax Law</u></a></p>	<p><a href="#"><u>International Bureau of Fiscal Documentation</u></a></p>
<p><a href="#"><u>International Bar Association</u></a></p>	<p><a href="#"><u>International Fiscal Association</u></a></p>	<p><a href="#"><u>International Tax Planning Association</u></a></p>
<p><a href="#"><u>American Bar Association</u></a></p>	<p><a href="#"><u>International Events and Law Conferences</u></a></p>	<p><a href="#"><u>Practising Law Institute</u></a></p>
	<p><a href="#"><u>New York Bar Association</u></a></p>	<p><a href="#"><u>Hieros Gamos Worldwide Law Events</u></a></p>

## 10 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages. Italics indicate ATTA members.

### Domestic

#### The Conversation

ATTA Member contribution(s)

- *Jonathan Barrett* - '[Forget a capital gains tax – what New Zealand needs is a tax on inherited wealth](#)', 31 July 2020
- *Ann Kayis-Kumar, Chris Evans and Youngdeok Lim* - '[Yes, there are millionaires who pay no tax, but crimping deductions mightn't help](#)', 13 July 2020

Articles of Interest

- Craig Batty, Alison Owens, Donna Lee Brien and Elizabeth Ellison - '[1 in 5 PhD students could drop out. Here are some tips for how to keep going](#)', 15 July 2020
- Robert Breunig, Kristen Sobek and Peter Varela - '[Progressive in theory, regressive in practice: that's how we tax income from savings](#)', 20 July 2020
- Janine Dixon and Jason Nassios - '[Post-COVID, there'll be less of a reason to cut company tax than before](#)', 31 July 2020
- John Quiggin - '[Cutting taxes for the wealthy is the worst possible response to this economic crisis](#)', 14 July 2020
- Julie Ratcliffe - '[Australians want more funding for higher-quality aged care - and most are willing to pay extra tax to achieve it](#)', 23 July 2020
- Harry Scheule - '[Why NSW is skewing its tax system toward build-to-rent apartments and away from mum and pop landlords](#)', 31 July 2020

#### Tax and Transfer Policy Institute

[Working Papers](#)

Papers of Interest

- Robert Breunig and Tristram Sainsbury - '[Covid-19 has exposed the weaknesses in the Australian tax system: Tax reform will be required for recovery](#)', Paper No 10/2020
- Lekha Chakraborty, Veena Nayyar and Komal Jain - '[Determining gender budgeting in multi-level federalism](#)' Paper No 9/2020
- Jim Killaly – '[The Glencore case: Transfer pricing and the world of possibilities](#)', Paper No 8/2020

#### British Tax Review

[2020 | Volume 73 | Issue 3](#)

ATTA Member Contribution(s)

- *Antony Ting* - 'Intangibles and the Transfer Pricing Reconstruction Rules: A Case Study of Amazon'
- *Yige Zu, Chris Evans and Richard Krever* - 'The VAT Compliance Burden in the UK: A Comparative Assessment'

#### Tax and Transfer Policy Institute

[Austaxpolicy.com Blog](#)

Articles of Interest

- Harikrishnan S - 'India's Pandemic Response – Has It Been Enough?', 13 July 2020
- John Freebairn - 'Reforming State Property Taxes', 15 July 2020
- Robert Breunig, Kristen Sobek and Peter Varela - 'Progressive in Theory, Regressive in Practice: That's How We Tax Income From Savings', 20 July 2020
- Felix Hugger - 'The Impact of Country-by-Country Reporting on Corporate Tax Avoidance', 27 July 2020
- Jannet Farida Jacob and Lekha Chakraborty - 'Child Budgeting During COVID-19: The Case of Indian State of Karnataka', 6 August 2020
- John Hewson - 'Advance Australia Fair? To Recover From COVID, Reset Social Policy', 3 August 2020

#### The McKell Institute

Discussion Paper

Paper(s) of Interest

- Liliana Tai and Edward Cavanaugh - '[A COVID-19 tax rebate for frontline workers](#)', 10 June 2020

### International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

#### Recent Book Publications

ATTA Member publication(s)

- *Hope Ashiabor* - '[Tax expenditures and environmental policy](#)', Edward Elgar Publishing
- *Richard Krever* and François Vaillancourt (ed) - '[The Allocation of multinational business income: reassessing the formulary apportionment option](#)', Kluwer Law International. Additional contributions to this book:
  - *Kerrie Sadiq* - 'Chapter 7: A Framework includefor Assessing Business Sector Formulary Apportionment'
  - *Fei Gao* and *Antony Ting* – 'Chapter 9: Is Arm's Length Profit Split Methodology Morphing into a Formulary Apportionment Hybrid: The Chinese Example'

Other Books of Interest

- John Abrahamson - '[International taxation of banking](#)', Kluwer Law International

**Canadian Tax Journal**

[2020 | Volume 68 | Issue 2](#)

ATTA Member contribution(s)

- *John Bevacqua* - 'Unresolved Controversies in Suing for Negligence of Tax Officials: Canadian and Australasian Insights and a Primer for Policy Makers' Consideration'
- *Richard Krever* - 'A Tax Policy Legacy: Tim Edgar's Contributions to Tax Scholarship and Tax Legislation'

Other Articles of Interest

- Derrick Hosanna and Erica Hennessey - 'The Death of the Tariff: A Review of the Tax Court's Discretionary Approach to Costs Awards'

## 11 | QUOTABLE QUOTES

"Business Council of Australia chief executive Jennifer Westacott told Sky on Sunday "you can't tax and spend your way out of" the pandemic and government would need long-term reform to grow the economy by reducing tax, deregulating the economy, cutting red tape and creating a more flexible industrial relations system."

*Mike Foley*

Read more here: [Sydney Morning Herald](#)

"Raid on the future

Anyone thinking that the Australian Taxation Office was staffed by humourless bureaucrats will have to think again. This follows the admission by Second Commissioner Jeremy Hirschhorn that the ATO had approved people making emergency withdrawals from their superannuation account without any basic checks, such as whether the applicant had lost their job, instead saying: 'We give money to people on their say so. We work on the assumption that Australians are honest' ('ATO says no checks on early access to super', July 31)."

*Maurice Critchley* - Kenthurst

Source: Letter to the Editor, Sydney Morning Herald 12 August 2020 p 29

"If the ATO works on the assumption "Australians are honest", can it explain the need to conduct audits on taxpayers".

*Bob Cameron* - Coffs Harbour

Source: Letter to the Editor, Sydney Morning Herald 12 August 2020 p 29

"40 Consequently, I reject the submission of Senior Counsel for the Appellant that these were the actions of a Mr Darcy. The facts of this case are about as far from a Jane Austen novel as it is possible to be. Nor can I accept Senior Counsel's submission that one should infer that the Appellant only wished to be the Respondent's 'platonic' lover.

41 In that circumstance, there is no need to assess the correctness of the Appellant's contention that misguided but lofty-minded romantic conduct cannot constitute sexual harassment. It is not necessary because the facts of this case do not involve misguided but lofty-minded romantic conduct. Cases such as *Spencer v Dowling* [1997] 2 VR 127 and *Aleksovski v Australia Asia Aerospace Pty Ltd* [2002] FMCA 81 might well suggest that repeated, written declarations of love may on their own constitute sexual harassment. But this case involves much more than that. Wherever may lie the frontiers of the juristic conceptions in s 28A(1) of the unwelcome sexual advance or unwelcome conduct of a sexual nature, they comfortably enclose the shabby state of affairs in which a man gains access to his female employee's bedroom dressed only in his underwear. The trial judge described some aspects of the Appellant's evidence as 'delusional'. I regret that the same may be said of this aspect of the appeal."

*Perram J*

Read more here: [Hughes trading as Beesley and Hughes Lawyers v Hill \[2020\] FCAFC 126](#)





## ISSUE HIGHLIGHTS

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“Taxes are often misunderstood, but seldom forgotten.”

- Lord Bramwell

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## 01 | PRESIDENTIAL COLUMN

### *President's Note*

Kia ora and welcome to the September newsletter

As notified in the last newsletter, we now have a new standalone website for ATTA, thanks to Annette Morgan and her colleagues at Curtin University. If you know of any websites that include a link to the UNSW website for ATTA or JATTA, please let me know and we will arrange to have these updated. If you haven't had a chance to look at the new website yet, I encourage you to do so: <https://www.atta.network/>

I would like to bring the notice at item [6] to your attention. As you may be aware, for the past three years, ATTA has provided a \$1,000 financial scholarship to assist one female academic to attend the ATTA conference. This year, the scholarship

criteria have been amended to recognise the challenges of Covid-19. We encourage female Lecturers and Senior Lecturers to consider applying for the scholarship.

Many of you will know that our General Editor of the ATTA Newsletter, Colin Fong, has indicated that he will step down from his role in February 2021. There have been some changes made to the Newsletter in recent months and we are now seeking Expressions of Interest from among our membership for someone to take over this role and continue with innovating ways to keep our community connected. Please contact me if you would like to know more about this role ([lisa.marriott@vuw.ac.nz](mailto:lisa.marriott@vuw.ac.nz)).

Finally, many thanks to Rob Whait at



UniSA who has offered to host our 2023 ATTA conference in Adelaide. By way of reminder, the current plan is for a face-to-face ATTA conference at the University of Canterbury in January 2022.

With best wishes

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

Both the ATTA 2021 conference organising committee and the ATTA Executive have reached the unprecedented decision that we are postponing the January 2021 conference to 19-21 January 2022 (equivalent dates) due to the impact of COVID-19. The decision comes with a background of borders being closed and likely at best to open to Australia only (meaning a large portion of our attendees from outside the region could not come), and with many academics and graduate students facing reduced conference budgets and thus being unable to attend.

*Adrian Sawyer*

## 03 | ATTA 2021 SYMPOSIUM SUGGESTION

The full formal ATTA conference to be held in Christchurch in January 2021 will now be postponed until January 2022. In an attempt to provide a feeling of collegiality and continuity to the ATTA community it is suggested that a one day symposium be held both in New Zealand and Australia. This would in particular provide an opportunity for PhD students within our discipline to present their ongoing research and receive valuable feedback. There would be no particular 'theme' to the symposium so all papers are welcome.

The proposed symposium will be held in lieu of the official ATTA conference. One suggestion is to hold a one day symposium at the University of Canterbury, with potentially a similar one day event in Australia. Expressions of interest are welcome for someone in Brisbane, Melbourne or Sydney to host a symposium. The symposiums could be run on different days with the opportunity to have people either 'Zoom' in to the sessions or attend in person. There would be no concurrent sessions.

### *Abstracts*

Abstracts only would be required prior to the event to put together a programme. There would be no formal review of papers. Abstracts would be required by 30 November 2020.

### *Symposium Dates Suggested*

The dates tentatively being considered would be around the usual ATTA conference time, with perhaps the New Zealand symposium being held on Wednesday 20 January 2021 and the Australian symposium, should one go ahead, on Thursday 21 January.

*Cost*

The University of Canterbury has expressed willingness to host the NZ symposium. We anticipate a small cost for those attending in person to cover catering expenses.

*Tentative Day Programme*

- Welcome
- Morning Presentations (with a morning tea break) 9am to 12 noon
- Lunch and mingling (1 metre apart) 12 noon to 1pm
- Afternoon Presentations (with an afternoon tea break) 1pm to 5pm
- Social Event and Dinner 6pm (for those attending in person)

*Presentations*

The usual 20 to 25 minutes presentation with up to 10 minutes for comments/questions.

Feedback from the ATTA community is sought as to whether this would be of interest to proceed. Please email your views to Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz)), and Lisa Marriott ([Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)) by the end of September.

**At the time of writing, due to New Zealand continuing to move between alert levels, it is unclear that should the symposium proceed, what format it will take (for example, on-line). We may have a clearer picture after the mid-October general election**

## 04 | ARRIVALS, DEPARTURES AND HONOURS



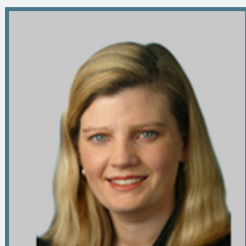
Duncan Bentley is certain that it was his tax expertise that was key to achieving his new role as Vice-Chancellor of Federation University. As regional universities are becoming the focus for jobs, innovation and economic growth in Australia post-Covid, there will be many opportunities to surprise (enthral?) audiences by inserting a tax policy dimension into every discussion.



Yuan (Helen) Ping is Associate Lecturer and PhD student at the Research School of Accounting, College of Business and Economics, Australian National University. She is tutoring in tax law, commercial law (co-teaching with Dr Sonali Walpola) and corporations law. Her research interest lies in corporate tax avoidance and regulatory enforcement.



Moira Saccasan has retired from Western Sydney University.



Shannon Smit is a Senior Fellow in the Melbourne Law Masters program, co-teaching Transfer Pricing: Practice and Problems, and International Tax: Principles and Structure in Semester 2, 2020 with Associate Professor Mike Kobetsky. Shannon has extensive international experience advising multinational companies in the areas of corporate and international taxation. Shannon founded award-winning Transfer Pricing Solutions Australia in 2007 after 11 years of working with a Big 4 in Amsterdam, Prague, Melbourne and New York. Now with Transfer Pricing Solutions offices spanning across Singapore and Malaysia, Shannon’s global experience and local knowledge ensures that her teaching focus is relevant, practical and current.

## 05 | BULLETIN BOARD

### **ATTA Member to do MS GONG Ride at Home**

ATTA and Tax Colleagues,

The normal MS Gong Ride in November is not on this year due to COVID-19.

Instead though, I along with many others, will be doing a stationary bike ride(s) at home. For me, it will be to ride 410 kilometres (roughly half way from Sydney to Melbourne) in October. That is 20 kilometres per session for 20 sessions (under a bit of time pressure and reasonable resistance level).

Please consider supporting me to raise money for MS (link below). As always, a big thank you to those that have supported me in previous years on this. It is something I really value.

Best wishes to you in these strange times

<https://www.msgongride.org.au/fundraiser/daleboccella>

### **Australian and New Zealand Tax and Related Doctoral Theses**

Since the ATTA News for December 2002, I have published an annual list, which contained details of Australian and New Zealand tax and related PhDs and SJDs completed and in progress.

During the past year, a number of doctoral theses were completed. Please notify me of any, which have commenced or have been completed and or have been accepted for publication. I hope to issue a new list in December 2020.

See the earlier issues for information required ie Author, Title of thesis, Institution, Supervisor/s, expected date of completion (optional). For completed ones, if published, please supply the title, place of publication, publisher, date of publication. If available electronically, please supply the URL or where it can be found. If you wish to preview the list before publication, please let me know by email.

*Colin Fong*

### **Nineteenth Amendment Centennial Cookbooks**

In case (pun intended) you missed it:

<https://www.19thamendmentcookbook.com/cookbook/ecookbook.html>

An entry by our patron, Pagone J (ret.) makes an appearance on page 42.

*Donovan Castelyn*

### **ATTA News Publishing Deadlines**

Please note the following dates are approximate.

October Edition of ATTA News

- Items to the Editor by: 13 October 2020
- Publicly available on: 20 October 2020

November Edition of ATTA News

- Items to the Editor by: 13 November 2020
- Publicly available on: 20 November 2020

December Edition of ATTA News

- Items to the Editor by: 11 December 2020
- Publicly available on: 18 December 2020

### **Special edition of the Journal of Australian Taxation**

There will be a special edition of the Journal of Australian Taxation edited by Michael Blissenden. It will contain separate papers on the 10 tax clinics that were established under the National Tax Clinic Program by the Government and administered by the ATO.

The papers will be a collection of the differences in the various tax clinic models; the challenges that they faced in being established; and the ongoing challenges for the future. The edition should be available on the website by the end of September and it will be (2020) Volume 22(2). The normal edition of the Journal of Australian Taxation will also be uploaded to the website, and it will be (2020) Volume 22(1).

I will be able to provide specific details of the individual papers for the next edition of the ATTA news in October.

*John McLaren*

### **Do you have a Bulletin Board item?**

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

## 06 | PROMOTING WOMEN IN TAX ACADEMIA SCHOLARSHIP – CALL FOR APPLICATIONS

ATTA recognises that while around half of all tax academics in Australia and New Zealand are women, women are underrepresented at senior academic levels. Professors are more than twice as likely to be male as female. Associate Professors are twice as likely and Senior Lecturers nearly twice as likely to be male. It is only at the Lecturer level that females outnumber males.

In 2017 ATTA decided to offer one scholarship a year for five years, valued at \$1,000 to a woman applicant at the Lecturer/Senior Lecturer level to assist them to attend and present a paper at the annual ATTA Conference. This year the Promoting Women in Tax Academia Scholarship criteria will be adjusted to recognise the challenges of Covid-19. Instead of providing assistance to attend the conference, we invite applications from women academics at the Lecturer/Senior Lecturer level who have had their tax scholarship adversely impacted by Covid-19.

In your application, please explain the impact of Covid-19 on your research and identify how the scholarship funding will help your research activity. The funding may be used for any purpose that will assist with research outputs, e.g. editing, research assistance.

Please submit your application on the form below by Friday 12 November 2020 if you wish to be considered for the scholarship. Announcement of the successful applicant will be made in the December ATTA Newsletter.

The successful applicant will be selected by a panel made up of senior female members of ATTA. The panel's decision will be communicated to the successful applicant by the end of November.

Applications should be emailed to Professor Lisa Marriott (President – ATTA) at [Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)

## 07 | CALL FOR SUBMISSIONS

### **Clinical Tax Education: International Handbook**

First Edition

**Ranking:** TBA

**Proposals Deadline:** 4 December 2020

**Publication Date:** 2022

**Proposed Editors:** Dr Amy Lawton (Lancaster University), *Donovan Castelyn* (Curtin University), David Massey (University of Central Lancashire), *Annette Morgan* (Curtin University).

Call for chapter contributions:

Tax Clinics are now established throughout the world. With recent clinical developments in the UK, Ireland, and Australia, it is a timely opportunity to bring together tax clinic scholarship. This is the aim of Clinical Tax Education, which will explore the benefits of clinics for our students and communities. The book particularly welcomes contributions on tax clinic projects but would also welcome contributions on novel projects that seek to bring tax, students, and our communities together.

Contributions should aim to discuss one of the following themes:

- Students (experience and contribution)
- Supervisors (project administration and the profession)
- State (relationships with tax authorities, government, and influence on policy)
- Society (clients and our local communities)

We would expect full contributions to be no longer than 6,000 words and would need to be submitted late 2021 for a target 2022 publication. We welcome proposals from anyone involved in a community tax project, including but not limited to academics, practitioners, policymakers and students.

If you would like to contribute a chapter to a book on this subject, please send a chapter proposal abstract of 250 words to Amy Lawton, [a.lawton1@lancaster.ac.uk](mailto:a.lawton1@lancaster.ac.uk). Your abstract should outline your project and how you will respond to one of the above themes. The deadline for proposals is Friday 4th December 2020. We hope to be provisionally in touch with authors in early 2021.



**Austaxpolicy.com Blog (Tax and Transfer Policy Institute)**

[TTPI Working Papers and Policy Briefs](#)

**Manuscripts Submission Deadline:** Continually

**Publication Date:** Continually

[tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au)

## 08 | TAX LAW DEVELOPMENTS

### Australia

#### Federal Court of Australia

##### [Commissioner of Taxation v Fortunatow \[2020\] FCAFC 139](#)

McKerracher, Davies and Thawley JJ – 17 August 2020

Catchwords:

- Taxation - personal services income provisions in the Income Tax Assessment Act 1997 (Cth) – personal services business tests – unrelated clients test – relationship between ss 87-20(1)(b) and 87-20(2) – proper construction of s 87-20(1)(b) – meaning of "as a direct result" – whether appeal competent - appeal allowed with costs

The court orders that:

1. The appeal be allowed.
2. Set aside orders 1 to 3 made by the primary judge on 12 August 2019 and in lieu thereof order that the appeal be dismissed.
3. The appellant pay the first respondent's costs of the appeal as agreed or assessed.

---

##### [Huang v Deputy Commissioner of Taxation \[2020\] FCAFC 141](#)

Besanko, Thawley and Stewart JJ – 17 August 2020

Catchwords:

- Practice and procedure — application for leave to appeal from certain orders in a freezing order — where freezing order made in relation to assets in Australia and overseas — where applicant has substantial assets in Hong Kong and China — whether judgments of courts in Australia enforceable in Hong Kong and China — test to be applied to determine whether judgments of courts in Australia enforceable in Hong Kong and China — realistic possibility of enforcement — where judge applied incorrect test— consideration of relevant factors in this case — leave to appeal granted — appeal allowed.

The court orders that:

1. The applicant file within seven days consent minutes of order reflecting the conclusions in the Court's reasons. In the event the parties are unable to agree, the applicant file and serve within seven days draft minutes setting out the orders he seeks and a short note setting out the areas of dispute between the parties.

---

##### [Carter v Commissioner of Taxation \[2020\] FCAFC 150](#)

Jagot, Davies and Thawley JJ – 10 September 2020

Catchwords:

- Taxation – application for an extension of time to appeal under s 44 of the Administrative Appeals Tribunal Act 1975 (Cth) from a decision on a review under s 14ZZK of the Taxation Administration Act 1953 (Cth) – purported distribution of trust income – whether Tribunal erred in holding there was no resolution distributing trust income – where consent of Guardian required for distribution – where Guardian did not know of her appointment as Guardian – held no distribution of trust income – disclaimers by default beneficiaries – whether disclaimers effective – effect of delay – third disclaimers were effective – whether disclaimers operated retrospectively for the purposes of s 97 of the Income Tax Assessment Act 1936 (Cth) – held disclaimers operated retrospectively – appeal allowed

The court orders that:

1. The appeal be allowed.
2. The decision of the Tribunal dated 23 December 2019 affirming the decisions under review be set aside, and in lieu thereof the objections of each of the applicants to the assessments for the 2014 income year be allowed.
3. The respondent pay the applicants' costs of the appeal.



[\*N & M Martin Holdings Pty Ltd v Commissioner of Taxation \[2020\] FCA 1186\*](#)

Steward J – 18 August 2020

Catchwords:

- Taxation – notices of appeal against appealable objection decisions under s. 14ZZ of the Taxation Administration Act 1953 (Cth.) – where assessments issued to trustee of resident discretionary trust and a non-resident discretionary beneficiary of that trust for the 2013 and 2014 years of income – where trustee made capital gains on disposal of shares in each of those years – where shares disposed of were not ‘taxable Australian property’ for purposes of Div. 855 of Income Tax Assessment Act 1997 (Cth.) – where trustee resolved to distribute to the beneficiary 99.27% and 100% of capital gains made from sale of those shares in those respective years – where trustee assessed in respect of those gains pursuant to s. 115-220 and to s. 98 of the Income Tax Assessment Act 1936 (Cth.) – where beneficiary also assessed in respect of those gains pursuant to s. 115-215(3) – whether capital gains capable of being disregarded by beneficiary pursuant to s. 855-10 – interaction of Div. 855 with Subdiv. 115-C – consideration of Peter Greensill
- Administrative law – application for judicial review under s. 39B of the Judiciary Act 1903 (Cth.) and the Administrative Decisions (Judicial Review) Act 1977 (Cth.) – where judicial review sought in respect of decision by the Commissioner not to remit shortfall interest charge under s. 280-160 of Sch. 1 of the Taxation Administration Act 1953 (Cth.) in respect of the beneficiary for the 2014 year of income – whether Commissioner had asked wrong statutory question and had thereby erred at law – whether Commissioner applied test as expressed in s. 8AAG for remission of general interest charge as opposed to test under s. 280-160 for remission of shortfall interest charge

The court orders that:

1. The parties are to confer and, if agreement can be reached, provide the Court with orders for final relief within 14 days hereof, or failing that, each party shall file written submissions on the issue of the form of final relief limited to four pages in length.

---

[\*Zeqaj v Deputy Commissioner of Taxation \[2020\] FCA 1270\*](#)

Steward J – 4 September 2020

Catchwords:

- Bankruptcy – appeal from judgment of the Federal Circuit Court making a sequestration order against the appellant pursuant to s. 43 of the Bankruptcy Act 1966 (Cth.) – where sequestration order based on default judgment debt that was unsuccessfully sought to be set aside by the appellant in proceedings in the Supreme Court of Victoria – where judgment debt based on amended assessments already objected to by the appellant and upheld by the Administrative Appeals Tribunal – whether the learned primary judge erred in making a sequestration order

The court orders that:

1. The appeal be dismissed with costs as agreed or assessed, to be paid by the appellant or from the appellant’s estate in bankruptcy in accordance with the provisions of the Bankruptcy Act 1966 (Cth.), whichever is appropriate at the time payment is required.

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[\*Crown Melbourne Limited v Commissioner of Taxation \[2020\] FCA 1295\*](#)

Davies J – 10 September 2020

Catchwords:

- Taxation - goods and services tax (GST) - appeal under s 14ZZ of the Taxation Administration Act 1953 (Cth) against Commissioner's GST assessments - casino junket arrangements - whether special rules in Div 126 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act) apply to commission and win/loss rebates payable to or by junket tour operators – whether commission and win/loss rebates are severable from other amounts payable under junket arrangements – contractual arrangements between casinos and junket tour operators considered – application of s 126-10 of the GST Act – commission and win/loss rebates payable to or by junket tour operators constitute part of either consideration for gambling supplies or total monetary prizes

The court orders that:

1. Within 14 days the parties provide by email to the Chambers of Justice Davies a draft form of order giving effect to these reasons.

*Supriya Eliezer and Colin Fong*

## 09 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

#### [University of Melbourne Annual Tax Lecture 2020](#)

**Provisional Date:** 15 October 2020

**Location:** Online AEST

**Cost:** TBA

**Theme:** Fixing the Defective Jigsaw

#### 2021 ATTA Conference

More information on pages 2 and 3 of this edition of ATTA News.

#### Melbourne Law School Tax Research Seminars Online

Melbourne Law School will host a regular tax research seminar online series starting in July 2020. We hope to continue the series into 2021 and hopefully beyond, if there is interest, to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the region. Papers will be circulated to registered participants ahead of time. The usual format will be a presentation of a paper for about 25 to 30 minutes, comments from a discussant and then ample time for questions and discussion. The seminar will be run online as a Zoom meeting, not a webinar, to enable discussion. Participants will need to register for the seminar ahead of time to receive the zoom password, link and paper. Dates and topics for 2020 seminars are below:

- 17 September 2020: Adjunct Professor Richard Highfield, UNSW, '[Diagnosing the VAT Compliance Burden: A Cross-Country Assessment](#)'
- 29 October 2020: Dr Ann Kayis-Kumar, UNSW, 'Pro Bono Tax Clinics: An International Comparison and Framework for Evidence-based Evaluation', with Discussant Ms Kate Fischer-Doherty, Director of Melbourne Law School Clinics
- 26 November 2020: Dr Sonali Walpola, ANU, 'The taxation of capital gains in trusts after Bamford: A critical evaluation of the streaming regime in Subdiv 115-C ITAA97', with Discussant Dr Mark Brabazon, University of Sydney and NSW Bar

If you are interested in attending these events please email [law-tax@unimelb.edu.au](mailto:law-tax@unimelb.edu.au)

#### University of Melbourne Semester 2 Tax Subjects

Limited spaces are still available for the following subjects. Please [register](#) early to ensure your space.

- 18-24 November 2020: [Income Tax Compliance and Enforcement](#) taught by Professor Emeritus Arie Freiberg
- 2-8 December 2020: [Comparative International Tax](#) taught by Professor Kim Brooks

[The Tax Institute](#)

[Law Council of Australia](#)

[Australian Conference Alerts](#)

## International

Various international events happening in the foreseeable future are listed below.

<p><a href="#">21st Global Conference on Environmental Taxation</a></p> <p><b>Date:</b> 24-25 September 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> Environmental Taxation in an Era of COVID-19</p>	<p><a href="#">International Fiscal Association Virtual Program</a></p> <p><b>Date:</b> 18-25 November 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> TBA</p>	<p><a href="#">5th International Taxpayer Rights Conference</a></p> <p><b>Date:</b> Postponed to 6-7 October 2021  <b>Location:</b> Pretoria, South Africa  <b>Cost:</b> USD\$325  <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries</p>
<p><a href="#">International Fiscal Association Congress</a></p> <p><b>Date:</b> Postponed to 10-15 September 2022  <b>Location:</b> Cancun, Mexico  <b>Cost:</b> Unknown  <b>Theme:</b> TBA</p>	<p><a href="#">Canadian Tax Foundation</a></p>	<p><a href="#">Institute for Fiscal Studies</a></p>
	<p><a href="#">Institute for Austrian and International Tax Law</a></p>	<p><a href="#">International Bureau of Fiscal Documentation</a></p>
	<p><a href="#">International Fiscal Association</a></p>	<p><a href="#">International Tax Planning Association</a></p>
<p><a href="#">International Bar Association</a></p>	<p><a href="#">International Events and Law Conferences</a></p>	<p><a href="#">Practising Law Institute</a></p>
<p><a href="#">American Bar Association</a></p>	<p><a href="#">New York Bar Association</a></p>	<p><a href="#">Hieros Gamos Worldwide Law Events</a></p>

## 10 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages. Italics indicate ATTA members.

### Domestic

<p><b>The Conversation</b></p> <p>ATTA Member contribution(s)</p> <ul style="list-style-type: none"> <li>• <i>Jonathan Barrett</i> - '<a href="#">With their conservative promises, Labour and National lock in existing unfairness in New Zealand's tax system</a>', 11 September 2020</li> </ul> <p>Articles of Interest</p> <ul style="list-style-type: none"> <li>• Pnina Levine and Narrelle Morris - '<a href="#">What are universities for? If mainly teaching, can they sack academics for not meeting research targets?</a>', 19 August 2020</li> <li>• Peter Varela, Kristen Sobek and Robert Breunig - '<a href="#">We need super, but we're taxing it the wrong way round</a>', 13 August 2020</li> </ul>	<p><b>Tax and Transfer Policy Institute</b></p> <p><a href="#">Austaxpolicy.com Blog</a></p> <p>ATTA Member contribution(s)</p> <ul style="list-style-type: none"> <li>• <i>John Bevacqua</i> - 'Suing Negligent Australian Tax Officials – Recent Judicial Developments &amp; Possible Future Directions', 26 August 2020</li> <li>• <i>Michael Kobetsky</i> - 'The Transfer-Pricing Profit Split Method After BEPS: Back to the Future', 31 August 2020</li> </ul> <p>Articles of Interest</p> <ul style="list-style-type: none"> <li>• Deborah Cleland and Valerie Braithwaite - 'New Debates Over the Cost of Degrees Reignites Unresolved Conflict Over Fairness in Higher Education', 18 August 2020</li> <li>• Peter Varela, Kristen Sobek and Robert Breunig - 'We Need Super, but We're Taxing It the Wrong Way Round', 13 August 2020</li> <li>• Christine Brown and Kevin Davis - 'Time to Kill Off Tax-Driven Off-Market Buybacks', 10 August 2020</li> <li>• Nazila Alinaghi and W Robert Reed - 'Taxes and Economic Growth in OECD Countries: A Meta-Analysis', 3 September 2020</li> </ul>
<p><b>Australian Taxation</b></p> <p><a href="#">2020   First Edition   Wiley</a></p> <p>ATTA Member contribution(s)</p> <ul style="list-style-type: none"> <li>• <i>John Bevacqua, Stephen Marsden, Elizabeth Morton, Luke Xu, Ken Devos and Rob Whait</i></li> <li>• E-Text available mid September 2020, print available November 2020</li> </ul>	

### Australian Tax Forum

[2020 | Volume 35 | Issue 3](#)

ATTA Member contribution(s)

- *Stephen Graw* - 'Solving Subdiv 360-A's 'Affiliate' Problem'
- *Sonali Walpola* - 'The Taxation of Capital Gains in Trusts after Bamford: A critical evaluation of the streaming regime in Subdivision 115 C ITAA97'
- *Evgeny Guglyuvatyy* - 'Regulating a new phenomenon: examining the legal nature and taxation of cryptocurrencies in Australia and Singapore'
- *Sylvia Villios and David Brown* - 'Getting the priorities right: ATO garnishee notices in times of corporate distress'
- *Rodney J Brown* - 'Voluntary tax disclosures and corporate tax avoidance: Evidence from Australia'

### Inaugural Professorial Lecture

[30 August 2017](#)

ATTA Member contribution(s)

- *Shelley Griffiths* - 'Tax as law'

### Taxation in Australia

[2020 | Volume 55 | Issue 2](#)

ATTA Member contribution(s)

- *Peter Godber* - 'Unlocking value from the knowledge available to you'
- *Robert Deutsch* - 'Tax reform in the roaring 20s: Some ideas from The Tax Institute,'
- *Andrew Mills* - 'Tax reform: Selected issues'

[2020 | Volume 55 | Issue 1](#)

ATTA Member contribution(s)

- *Peter Godber* - 'The new normal and our hope to get there soon'

[2020 | Volume 54 | Issue 11](#)

ATTA Member contribution(s)

- *Peter Godber* - 'Members are carrying a heavy load'

### Tax Specialist

[2020 | Volume 24 | Issue 1](#)

ATTA Member contribution(s)

- *Dale Boccabella* - 'Myer isolated transactions doctrine (first strand) at 33-year anniversary'
- *Prafula Pearce* - 'Overcoming the challenges and barriers to purchasing low-emission vehicles'

[2020 | Volume 23 | Issue 5](#)

ATTA Member contribution(s)

- *Lex Fullarton* - 'Kimberley capers: An outback "whodunnit"?'

### Australian Business Law Review

2020 | Volume 48

ATTA Member contribution(s)

- *Kerrie Sadiq and Bronwyn McCredie* - 'The Challenges of industrial revolutions: Luddism and tax reform'

### James Cook University Law Review

[2019 | Volume 25](#)

ATTA Member contribution(s)

- *Stephen Graw* - 'Gourley revisited - taxing damages'

### Deakin Law Review

[2016 | Volume 21 | Issue 1](#)

ATTA Member contribution(s)

- *Fiona Martin* - 'To be or not to be, a charity?' That is the question for prescribed bodies corporate under the Native Title Act'

[2015 | Volume 20 | Issue 2](#)

Articles of Interest

- *Maria Bhatti* - 'Taxation treatment of Islamic finance products in Australia'

## International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

### Bulletin for International Taxation

[2020 | Volume 74 | Issue 9](#)

ATTA Member contribution(s)

- *Craig Elliffe* - 'International tax frameworks: Assessing the 2020s compromise from the perspective of taxing the digital economy in the great lockdown'

### Carbon and Climate Law Review

[2019 | Volume 13 | Issue 3](#)

ATTA Member contribution(s)

- *Cassandra Pickering and Evgeny Guglyuvatyy* - 'Negative impact of land clearing and deforestation on the Great Barrier Reef'

### Recent Book Publications

Other Books of Interest

- *Mariya Senyk* - '[The Origin and destination principles as alternative approaches towards VAT allocation: Analysis in the WTO, the OECD and the EU legal frameworks](#)', July 2020, International Bureau of Fiscal Documentation

## 11 | QUOTABLE QUOTES

"In the 12th century, King David 1 of Scotland promised tax rebates to any of his subjects who could learn to eat their food more elegantly."

Source: Miriam Cosic, 'Oh, please', Good Weekend Sydney Morning Herald, 28 September 2019, pp18-20 at 18

"Australia is being governed by a cabinet of nobodies that most voters could not pick out of a police line up, according to new research.

In news that will provide grim reading for ambitious politicians jockeying for a position on breakfast television, a majority of voters don't have a clue who they are or would know what they looked like if they passed them in the street.

The name recognition polling obtained by news.com.au reveals that the most recognisable politician in the nation is unsurprisingly, the Prime Minister, Scott Morrison, who scores an 83 per cent rating.

The Australia Institute surveyed 1601 Aussies about which ministers and shadow ministers they had heard of and, unsurprisingly, Scott Morrison scored an 83 per cent rating.

But nearly one in five voters don't even know his name, according to the research conducted by the Australia Institute.

And in a surprising turn of events, some voters appear to have forgotten his name after the blanket Liberal election ads disappeared from our television screens, with his recognition rating taking a modest dip.

Voters were asked which current ministers and shadow ministers they had heard of by the research, commissioned by the Australia Institute.

The next most recognisable face in Australian politics is a woman who hung up her red stilettos and walked out of parliament forever in white Armani in February, 2019.

Former Foreign Minister Julie Bishop is the second most recognisable politician in the country, according to 74 per cent of voters."

Read more here: Samantha Maiden, [News.com.au](https://www.news.com.au)



## ISSUE HIGHLIGHTS

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“The difference between tax avoidance and tax evasion is the thickness of a prison wall”

- *Denis Healey*

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*Supriya Eliezer*

**Production Design:**

*Stephanie Bruce and Annette Morgan*  
Curtin University



## 01 | PRESIDENTIAL COLUMN

### *President's Note*

Welcome to the October newsletter.

I hope everyone is keeping well as the end of our term/trimester/semester draws closer.

One of the things we are planning to do with the new ATTA website, is to use this for sharing resources. Professor John Taylor from UNSW approached us to share the work that he has been doing with archival research at the National Archives of Australia over several years. John has been working through the ATO files on the negotiation of the 1982 Australia-United States Tax Treaty and in the process of doing this research, realised that it could be useful for people who want to examine this, or other aspects of the treaty, to have a guide to material contained in the 19 ATO files that relate to those

negotiations. You will now find this on the ATTA website.

If you have other resources that would be useful to share with ATTA members, please do send these through and we can arrange to have them put on the website.

A reminder that the Promoting Women in Tax Academia Scholarship is available for applications from women academics at the Lecturer/Senior Lecturer level who have had their tax scholarship adversely impacted by Covid-19. More details can be found in item [5] of the Newsletter.

A further reminder that we are seeking expressions of interest for someone to take on the important role of General Editor of the ATTA Newsletter. Please contact me if you



would like to know more about this role ([lisa.marriott@vuw.ac.nz](mailto:lisa.marriott@vuw.ac.nz)).

With best wishes

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

Both the ATTA 2021 conference organising committee and the ATTA Executive have reached the unprecedented decision that we are postponing the January 2021 conference to 19-21 January 2022 (equivalent dates) due to the impact of COVID-19. The decision comes with a background of borders being closed and likely at best to open to Australia only (meaning a large portion of our attendees from outside the region could not come), and with many academics and graduate students facing reduced conference budgets and thus being unable to attend.

*Adrian Sawyer*

## 03 | ATTA 2021 SYMPOSIUM SUGGESTION

The full formal ATTA conference to be held in Christchurch in January 2021 will now be postponed until January 2022. In an attempt to provide a feeling of collegiality and continuity to the ATTA community it is suggested that a one day symposium be held both in New Zealand and Australia. This would in particular provide an opportunity for PhD students within our discipline to present their ongoing research and receive valuable feedback. There would be no particular 'theme' to the symposium so all papers are welcome.

The proposed symposium will be held in lieu of the official ATTA conference. One suggestion is to hold a one day symposium at the University of Canterbury, with potentially a similar one day event in Australia. Expressions of interest are welcome for someone in Brisbane, Melbourne or Sydney to host a symposium. The symposiums could be run on different days with the opportunity to have people either 'Zoom' in to the sessions or attend in person. There would be no concurrent sessions.

### *Abstracts*

Abstracts only would be required prior to the event to put together a programme. There would be no formal review of papers. Abstracts would be required by 30 November 2020.

### *Symposium Dates Suggested*

The dates tentatively being considered would be around the usual ATTA conference time, with perhaps the New Zealand symposium being held on Wednesday 20 January 2021 and the Australian symposium, should one go ahead, on Thursday 21 January.

*Cost*

The University of Canterbury has expressed willingness to host the NZ symposium. We anticipate a small cost for those attending in person to cover catering expenses.

*Tentative Day Programme*

- Welcome
- Morning Presentations (with a morning tea break) 9am to 12 noon
- Lunch and mingling (1 metre apart) 12 noon to 1pm
- Afternoon Presentations (with an afternoon tea break) 1pm to 5pm
- Social Event and Dinner 6pm (for those attending in person)

*Presentations*

The usual 20 to 25 minutes presentation with up to 10 minutes for comments/questions.

Feedback from the ATTA community is sought as to whether this would be of interest to proceed. Please email your views to Adrian Sawyer ([adrian.sawyer@canterbury.ac.nz](mailto:adrian.sawyer@canterbury.ac.nz)), and Lisa Marriott ([Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)) by the end of October.

**At the time of writing, due to New Zealand continuing to move between alert levels, it is unclear that should the symposium proceed, what format it will take (for example, online). We may have a clearer picture after the mid-October general election**

## 04 | ARRIVALS, DEPARTURES AND HONOURS



Congratulations to Professor Dale Pinto who has been elected to the position of Deputy President of CPA Australia. CPA Australia is one of the world's largest accounting bodies with a global membership of more than 166,666 members (as at 31 December 2019) working in 100 countries around the world. Its core services to members include education, training, technical support and advocacy. Employees and members work together with local and international bodies to represent the views and concerns of the profession to governments, regulators, industries, academia and the general public.



The Hon Justice Jennifer Davies was appointed to the Federal Court of Australia in July 2013 and is the national coordinating judge of the Taxation Practice Area. Prior to her appointment, she was a Judge of the Supreme Court of Victoria. Justice Davies graduated from Monash University with a Bachelor of Jurisprudence and Bachelor of Laws and was admitted as a barrister and solicitor of the Supreme Court of Victoria. At the Victorian Bar, Justice Davies was appointed Senior Counsel in 2004, and practised in corporations, revenue, commercial and administrative law. Justice Davies teaches Tax Avoidance and Tax-Effective Writing in the Melbourne Law Masters and is a member of the Tax Group Advisory Board. Justice Davies is also on the board of the International Association of Tax Judges. In 2019, Justice Davies presented the Annual Tax Lecture which is published in the [Melbourne University Law Review](#).

Vale Robin Chan



With sadness, I note the unexpected passing of Robin Chan. I knew Robin as a student at the Law School, graduate of 2003 and the first international student to win the Supreme Court prize. Robin completed the Master of Tax and was a Senior Fellow leading the subject Administrative Law in Tax Matters. After judicial associateships, Robin practiced at Deacons Lawyers (now Norton Rose Fulbright) then was called to the Victorian Bar. Robin generously shared his laughter, wit and extraordinary knowledge of the law with friends and colleagues. Our thoughts are with his family: we will miss Robin.

*Miranda Stewart*

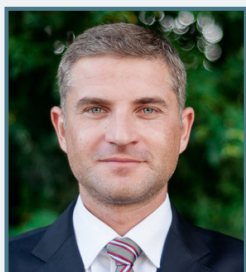
Director, Tax Studies and the Tax Group



Arezou Zaresani was a Research Fellow at Melbourne Institute of Applied Economics and Social Research at the University of Melbourne and is currently Assistant Professor, Department of Economics, University of Manitoba and a Research Affiliate at the Tax and Transfer Policy Institute (TTPI) at the Australian National University. Arezou has a Ph.D. in Economics from the University of Calgary and an MA in Economics from the Simon Fraser University. Arezou is an empirical microeconomist with interest in Labor, Public and Health economics. Her research involves design-based analysis where she exploits quasi-experimental variations to study economic questions of interest. Arezou's was recently awarded one of the Young Economist Awards of 2020 with the International Institute of Public Finance.



Paul Tilley was an economic adviser to governments for 32 years, working at senior levels in all parts of Treasury, as well as other key agencies such as the Department of Prime Minister and Cabinet, the Treasurer's office and the OECD. He is now a Senior Fellow at the Melbourne Law School, a Visiting Fellow at the Australian National University Tax and Transfer Policy Institute and works with a number of non-government organisations.



Georg Kofler (previously professor at the University of Linz) joined the Institute for Austrian and International Tax Law on 1 October 2020 as professor of tax law with focus on International Taxation. He also served as a visiting professor at the University of Florida (2013 and 2018), the University of Sydney (2016) and New York University (2019). His Inaugural Lecture "'Gimme Shelter': The Shielding Effect of European Tax Directives" is planned for 5 May 2021. Please find all information in the invitation and on our website [www.wu.ac.at/en/taxlaw/](http://www.wu.ac.at/en/taxlaw/). For administrative purposes, please use the online form to register for the new date. If you have any questions, please contact Ms Karina Hertle ([karina.hertle@wu.ac.at](mailto:karina.hertle@wu.ac.at)).

## 05 | PROMOTING WOMEN IN TAX ACADEMIA SCHOLARSHIP – CALL FOR APPLICATIONS

ATTA recognises that while around half of all tax academics in Australia and New Zealand are women, women are underrepresented at senior academic levels. Professors are more than twice as likely to be male as female. Associate Professors are twice as likely and Senior Lecturers nearly twice as likely to be male. It is only at the Lecturer level that females outnumber males.

In 2017 ATTA decided to offer one scholarship a year for five years, valued at \$1,000 to a woman applicant at the Lecturer/Senior Lecturer level to assist them to attend and present a paper at the annual ATTA Conference. This year the Promoting Women in Tax Academia Scholarship criteria will be adjusted to recognise the challenges of Covid-19. Instead of providing assistance to attend the conference, we invite applications from women academics at the Lecturer/Senior Lecturer level who have had their tax scholarship adversely impacted by Covid-19.

In your application, please explain the impact of Covid-19 on your research and identify how the scholarship funding will help your research activity. The funding may be used for any purpose that will assist with research outputs, e.g. editing, research assistance.

Please submit your application on the form below by Friday 12 November 2020 if you wish to be considered for the scholarship. Announcement of the successful applicant will be made in the December ATTA Newsletter.

The successful applicant will be selected by a panel made up of senior female members of ATTA. The panel's decision will be communicated to the successful applicant by the end of November.

Applications should be emailed to Professor Lisa Marriott (President – ATTA) at [Lisa.Marriott@vuw.ac.nz](mailto:Lisa.Marriott@vuw.ac.nz)

## 06 | BULLETIN BOARD

### **ATTA Member to do MS GONG Ride at Home**

ATTA and Tax Colleagues,

The normal MS Gong Ride in November is not on this year due to COVID-19.

Instead though, I along with many others, will be doing a stationary bike ride(s) at home. For me, it will be to ride 410 kilometres (roughly half way from Sydney to Melbourne) in October. That is 20 kilometres per session for 20 sessions (under a bit of time pressure and reasonable resistance level).

Please consider supporting me to raise money for MS (link below). As always, a big thank you to those that have supported me in previous years on this. It is something I really value.

Best wishes to you in these strange times

<https://www.msgongride.org.au/fundraiser/daleboccella>

### **Australian and New Zealand Tax and Related Doctoral Theses**

Since the ATTA News for December 2002, I have published an annual list, which contained details of Australian and New Zealand tax and related PhDs and SJDs completed and in progress.

During the past year, a number of doctoral theses were completed. Please notify me of any, which have commenced or have been completed and or have been accepted for publication. I hope to issue a new list in December 2020.

See the earlier issues for information required ie Author, Title of thesis, Institution, Supervisor/s, expected date of completion (optional). For completed ones, if published, please supply the title, place of publication, publisher, date of publication. If available electronically, please supply the URL or where it can be found. If you wish to preview the list before publication, please let me know by email.

*Colin Fong*

### **Journal of the Australasian Tax Teachers Association**

The papers that have been accepted for publication are now being edited. The authors will receive notification of any changes from Stephanie Bruce around the beginning of November and everything is on track to have them published by early-December.

*John McLaren*

### **ATTA News Publishing Deadlines**

Please note the following dates are approximate.

November Edition of ATTA News

- Items to the Editor by: 13 November 2020
- Publicly available on: 20 November 2020

December Edition of ATTA News

- Items to the Editor by: 11 December 2020
- Publicly available on: 18 December 2020

January Edition of ATTA News

- Items to the Editor by: 8 January 2020
- Publicly available on: 15 January 2020

### **Special edition of the Journal of Australian Taxation**

There will be a special edition of the Journal of Australian Taxation edited by Michael Blissenden. It will contain separate papers on the 10 tax clinics that were established under the National Tax Clinic Program by the Government and administered by the ATO.

The papers will be a collection of the differences in the various tax clinic models; the challenges that they faced in being established; and the ongoing challenges for the future. The edition should be available on the website by the middle of November and it will be (2020) Volume 22(2). The normal edition of the Journal of Australian Taxation will also be uploaded to the website, and it will be (2020) Volume 22(1).

I will be able to provide specific details of the individual papers for the next edition of the ATTA News in November.

*John McLaren*

### **Do you have a Bulletin Board item?**

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

## 07 | CALL FOR SUBMISSIONS

### **Clinical Tax Education: International Handbook**

First Edition

**Ranking:** TBA

**Proposals Deadline:** 4 December 2020

**Publication Date:** 2022

**Proposed Editors:** Dr Amy Lawton (Lancaster University), *Donovan Castelyn* (Curtin University), David Massey (University of Central Lancashire), *Annette Morgan* (Curtin University).

Call for chapter contributions:

Tax Clinics are now established throughout the world. With recent clinical developments in the UK, Ireland, and Australia, it is a timely opportunity to bring together tax clinic scholarship. This is the aim of Clinical Tax Education, which will explore the benefits of clinics for our students and communities. The book particularly welcomes contributions on tax clinic projects but would also welcome contributions on novel projects that seek to bring tax, students, and our communities together.

Contributions should aim to discuss one of the following themes:

- Students (experience and contribution)
- Supervisors (project administration and the profession)
- State (relationships with tax authorities, government, and influence on policy)
- Society (clients and our local communities)

We would expect full contributions to be no longer than 6,000 words and would need to be submitted late 2021 for a target 2022 publication. We welcome proposals from anyone involved in a community tax project, including but not limited to academics, practitioners, policymakers and students.

If you would like to contribute a chapter to a book on this subject, please send a chapter proposal abstract of 250 words to Amy Lawton, [a.lawton1@lancaster.ac.uk](mailto:a.lawton1@lancaster.ac.uk). Your abstract should outline your project and how you will respond to one of the above themes. The deadline for proposals is Friday 4th December 2020. We hope to be provisionally in touch with authors in early 2021.

### **Melbourne Law School Tax Research Seminars Online - Expression of Interest 2021**

**Ranking:** N/A

**Manuscript Deadline:** N/A

**Seminar Date:** Throughout 2021

Based on the success of our Tax Research Seminars Online in 2020, we are continuing the monthly series in 2021. We are seeking expressions of interest to present your paper in the series in 2021.

The Seminars are held on the last Thursday of each month, between February to November (except June) at 3.30pm – 5.00pm (AEST). The seminars are run online as a Zoom meeting, with 25 to 30 minutes paper presentation followed by 10-15 minutes comments from a discussant selected by the Chair and then ample time for questions and discussion. We have space for the months April to November at this stage. A full written paper is required to be circulated before the seminar and is published in the series on the Event webpage hosted by the Tax Group.

The Tax Research Seminars Online series hosted by the Tax Group at Melbourne Law School aims to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the Asia Pacific region, as well as further afield.

The list of past and upcoming seminars, and papers, in 2020 can be viewed [here](#).

If you are wishing to present a Seminar in the series, please email your draft or working paper, if available, or your proposed title and abstract for consideration, and please identify your preferred timeslot, if any. At the time of the seminar, papers should be substantial drafts, or prepared for working paper, journal submission, under review or accepted for publication.

Submission & enquiries: Please email to [law-tax@unimelb.edu.au](mailto:law-tax@unimelb.edu.au)



**Bulletin for International Taxation**

[Call for Authors](#)

**Manuscripts Submission Deadline:** N/A

**Publication Date:** Monthly

IBFD’s flagship journal examines policy changes and developments throughout the world and provides readers with the background and perspective to face the challenges of the contemporary tax landscape.

The journal is indexed in the American Economic Association’s electronic bibliography (EconLit) and has been accepted for inclusion in the Scopus database.

[editors@ibfd.org](mailto:editors@ibfd.org)

**Austaxpolicy.com Blog (Tax and Transfer Policy Institute)**

[TTPI Working Papers and Policy Briefs](#)

**Manuscripts Submission Deadline:** Continually

**Publication Date:** Continually

[tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au)

## 08 | TAX LAW DEVELOPMENTS

### Australia

#### Federal Court of Australia

[Commissioner of Taxation v Pike \[2020\] FCAFC 158](#)

Davies, White and Steward JJ – 22 September 2020

Catchwords:

- Taxation – Australia and Thailand double taxation treaty Art 4(3) – “tiebreaker” provisions regarding residency – where respondent’s de facto wife and children lived in Australia and respondent worked in Thailand – whether respondent had an habitual abode in both Australia and Thailand – whether assessment based on more than days spent in one contracting state over the other – whether respondent’s personal and economic relations were closer to Australia or Thailand – conjunctive test applied by primary judge – conclusion of primary judge not wrong on facts of case – appeal and cross-appeal dismissed
- Taxation – whether respondent a resident of Australia for tax purposes – definition of “resident” in s 6 of Income Tax Assessment Act 1936 (Cth) – application of “ordinary concepts test” – unnecessary to consider “domicile test”

The court orders that:

1. The appeal be dismissed.
2. The cross-appeal be dismissed.
3. Within seven (7) days of this order, the parties are to confer with a view to reaching agreement about the appropriate costs order and, in the absence of agreement, each party is to provide written submissions of no more than three (3) pages and, subject to any further order, the Court will then determine the issue of costs on the papers.

[Advanced Holdings Pty Ltd v Commissioner of Taxation \[2020\] FCAFC 157](#)

Allsop CJ, Bromwich and Steward JJ – 21 September 2020

Catchwords:

- Taxation – application for leave to appeal from interlocutory decisions to dismiss summarily an application to quash amended assessments made pursuant to s. 39B of the Judiciary Act 1903 (Cth.) and to give summary judgment in favour of Commissioner in recovery proceedings – where applicant made allegations of illegal conduct in assessment process relating to execution of search warrant and production of documents seized and relied upon in assessment – where learned primary judge summarily dismissed application in reliance upon High Court and Full Federal Court authority – whether decision of learned primary judge attended with sufficient doubt to warrant reconsideration by Full Court – whether substantial injustice would result if leave were refused, supposing decision to be wrong

The court orders that:

1. The application for leave to appeal be dismissed.
2. The applicants pay the costs of the respondent, as agreed or assessed.



[Huang v Deputy Commissioner of Taxation \(No 2\) \[2020\] FCAFC 160](#)

Besanko, Thawley and Stewart JJ – 28 September 2020

Catchwords:

- Practice and procedure – where appeal allowed against freezing orders against non-Australian assets – where remaining freezing orders against Australian assets sought to be amended in consequence of appeal – issue not squarely raised on appeal – likelihood that matter will require further hearing and evidence – assessment of whether hearing matter by the Full Court will serve interests of justice – whether issue better dealt with by single judge in original jurisdiction
- Costs – where applicant successful on appeal – whether Full Court should set aside the order for costs made by the primary judge and make new costs order – costs varied
- Costs – whether costs order against respondent should be set off of against judgment sum and costs orders in her favour in the principal proceeding – whether equitable to set off costs order – costs order set off

The court orders that:

1. The applicant be granted leave to appeal from Order 1 made by the Court in proceeding NSD 1490/2019 on 21 October 2019.
2. The applicant’s appeal be allowed.
3. The orders made by the Court in proceeding NSD 1490/2019 on 21 October 2019 be varied by: (1) substituting Annexure A referred to in Order 1 with the Penal Notice directed to the applicant which is Annexure A to these orders; and (2) adding an Order 4 as follows: “The applicant is to pay 50% of the costs of the hearing on 17 October 2019 including the costs of preparing submissions for that hearing.”
4. The respondent is to pay the applicant’s costs of the appeal as agreed or taxed.
5. Upon agreement as to the amount or after taxation, the costs payable to the applicant by the respondent in this proceeding by Order 4 above and in proceeding NSD 1490/2019 by Order 4 on 21 October 2019 as inserted by Order 3 above, are to be set-off against the applicant’s liability for the judgment sum and costs in proceeding NSD 1490/2019 by Orders 1, 2 and 3 on 19 December 2019.

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[Commissioner of Taxation v Healius Ltd \[2020\] FCAFC 173](#)

Jagot, Moshinsky and Colvin JJ – 9 October 2020

Catchwords:

- Taxation – appeals from decision dismissing appellant’s applications to appeal from objection decisions by Commissioner of Taxation – where lump sum amounts paid to medical practitioners under arrangements to conduct practice from respondent’s medical centres – whether primary judge erred in finding lump sum amounts made on revenue account for income tax purposes – whether primary judge erred by adopting narrow conception of nature of business – whether lump sum amounts paid to secure arrangements that formed part of profit-making structure of business – whether accounting treatment of lump sum amounts as goodwill supports claim that lump sum amounts made on capital account – consideration of distinction between capital and revenue expenditure – appeals allowed

The court orders that:

1. The appeals be allowed.
2. The orders made by the primary judge be set aside and in lieu thereof it is ordered that: (a) The applicant’s appeals be dismissed; and (b) The applicant pay the respondent’s costs.
3. The respondent pay the appellant’s costs of the appeals.

**New South Wales**

[Kedwell v Deputy Commissioner of Taxation \[2020\] NSWCA 238](#)

Bell P, Basten JA, Payne JA – 1 October 2020

Catchwords:

- Taxes and duties – administration of federal tax legislation – collection and recovery of taxes – PAYG tax – where company failed to remit PAYG withholdings to the Commissioner – where Director Penalty Notice issued – where appellant made payments to the Commissioner but failed to advise they were to be applied to the Director Penalty Notice liability – whether primary judge erred in finding that amounts paid did not extinguish Director Penalty Notice liability

Catchwords (continued):

- Estoppel – estoppel by representation – detrimental reliance – whether ATO officer made representations that the PAYG withholding liabilities had been satisfied – whether Commissioner estopped from asserting that the amount was received and allocated other than in satisfaction of Director Penalty Notice liability

The court orders that:

Payment defence

1. The evidence led by the appellant did not establish a loan agreement between Minerva and the appellant: [55]. Sporadic payments by Minerva to Synergy over the course of four months, without more, do not evidence a loan agreement: [53].
2. The payments made to the Commissioner were made by Synergy and Minerva in discharge of Synergy’s RBA debts, without the appellant, Synergy or Minerva giving a direction to the Commissioner that the funds should be applied to the appellant’s DPN liability: [58].
3. The appellant caused each of the payments to be made using an electronic funds transfer reference for Synergy and did not use the electronic funds transfer reference he was given in the DPN for payment of his DPN liability: [60].
4. Applying s 8AAZLE of the Taxation Administration Act 1953 (Cth), the Commissioner was not bound by any instructions given to him on behalf of Synergy about how those payments were to be allocated in payment of Synergy’s debts: [62].
5. The appellant’s evidence did not support a finding that there was any relevant error or mistake in the appellant’s failure to seek that the four payments be allocated towards the appropriate liabilities: [68].

Estoppel defence

6. In the telephone call on 23 January 2018, there was no representation made by the ATO officer about the ATO’s past or future conduct in relation to sums paid to Synergy’s Running Balance Account: [74], [78].
7. It was no part of the appellant’s pleaded case, nor his evidence, that it was the ATO officer on the telephone call of 23 January 2018 who in fact allocated any payment to the appellant’s DPN account: [80].
8. Admissions made by the appellant and the contemporaneous documents establish clearly that the appellant did not rely on the representation allegedly made by the ATO representative on 23 January 2018: [82], [83]. There was no reliance by the appellant on the alleged representation: [84].
9. None of the matters alleged by the appellant as constituting detriment was established: [86]. In respect to seeking to delay the proceedings, there is no evidence that the appellant contemplated attempting that outcome: [87]. The appellant was not prevented from seeking to recover Synergy’s debts by reason of any alleged representation by the Commissioner: [88].

Colin Fong

## New Zealand

*Commissioner of Inland Revenue v The Church of Jesus Christ of Latter-Day Saints Trust Board* [2020] NZSC 102

Under the Senior Courts Act 2016 (NZ) s 73, appeals to the Supreme Court are by leave only and should relate to matters of public interest or commercial interest (s 74(2)). In this case, the Court declined to hear an appeal by the Commissioner against the Court of Appeal’s decision that contributions to fund Mormon missionaries proselytising overseas constituted donations under Income Tax Act 2007 (NZ) s LD 1.

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*Commissioner of Inland Revenue v Frucor Suntory New Zealand Ltd* [2020] NZCA 383

The High Court found that a complex arrangement involving convertible notes issued by Deutsche Bank NZ to Frucor Holdings NZ (FHNZ) did not constitute tax avoidance. The Court of Appeal found that, when examined, the economic and commercial effect of the arrangement indicated that tax avoidance was the principal purpose or effect of the arrangement. However, the Court did not impose shortfall penalties.

Jonathan Barrett

## 09 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

<p><a href="#"><u>Women in IFA: Tax and Financing after COVID-19</u></a></p> <p><b>Date:</b> 19 October 2020  <b>Location:</b> Online 6-7pm AEDT  <b>Cost:</b> TBA  <b>Theme:</b> As above</p>	<p><a href="#"><u>Reconstructing the Tax Treaty Network Post MLI</u></a></p> <p><b>Date:</b> 28 October 2020  <b>Location:</b> Online 5:15-6:30pm AEDT  <b>Cost:</b> TBA  <b>Theme:</b> As above</p>	<p><b>Post-war Tax Reviews and the Asprey Blueprint</b></p> <p>Join Paul Tilley on Friday, 30 October 2020 for his online Zoom event, 'Post-war tax reviews and the Asprey Blueprint'. More details and registration is available on the <a href="#"><u>Tax and Transfer Policy Institute</u></a> website.</p>
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### Melbourne Law School Tax Research Seminars Online

Melbourne Law School will host a regular tax research seminar online series starting in July 2020. We hope to continue the series into 2021 and hopefully beyond, if there is interest, to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the region. Papers will be circulated to registered participants ahead of time. The usual format will be a presentation of a paper for about 25 to 30 minutes, comments from a discussant and then ample time for questions and discussion. The seminar will be run online as a Zoom meeting, not a webinar, to enable discussion. Participants will need to register for the seminar ahead of time to receive the zoom password, link and paper. Dates and topics for 2020 seminars are below:

- 29 October 2020: Dr Ann Kayis-Kumar, UNSW, 'Pro Bono Tax Clinics: An International Comparison and Framework for Evidence-based Evaluation', with Discussant Ms Kate Fischer-Doherty, Director of Melbourne Law School Clinics
- 26 November 2020: Dr Sonali Walpola, ANU, 'The taxation of capital gains in trusts after Bamford: A critical evaluation of the streaming regime in Subdiv 115-C ITAA97', with Discussant Dr Mark Brabazon, University of Sydney and NSW Bar

If you are interested in attending these events please email [law-tax@unimelb.edu.au](mailto:law-tax@unimelb.edu.au)

### ATTA 2021 Conference

Please see more information contained at items 2 and 3 above.

[The Tax Institute](#)

[Law Council of Australia](#)

[Australian Conference Alerts](#)

## International

Various international events happening in the foreseeable future are listed below.

<p><a href="#">WU Transfer Pricing Workshop</a></p> <p><b>Date:</b> 29 October 2020  <b>Location:</b> Online  <b>Cost:</b> Free  <b>Theme:</b> Transfer Pricing and Financing - what's the arm's length value of money?</p>	<p><a href="#">International Fiscal Association Virtual Program</a></p> <p><b>Date:</b> 18-25 November 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> TBA</p>	<p><a href="#">5th International Taxpayer Rights Conference</a></p> <p><b>Date:</b> Postponed to 6-7 October 2021  <b>Location:</b> Pretoria, South Africa  <b>Cost:</b> USD\$325  <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries</p>
<p><a href="#">International Fiscal Association Congress</a></p> <p><b>Date:</b> Postponed to 10-15 September 2022  <b>Location:</b> Cancun, Mexico  <b>Cost:</b> Unknown  <b>Theme:</b> TBA</p>	<p><a href="#">Canadian Tax Foundation</a></p>	<p><a href="#">Institute for Fiscal Studies</a></p>
	<p><a href="#">Institute for Austrian and International Tax Law</a></p>	<p><a href="#">International Bureau of Fiscal Documentation</a></p>
	<p><a href="#">International Fiscal Association</a></p>	<p><a href="#">International Tax Planning Association</a></p>
<p><a href="#">International Bar Association</a></p>	<p><a href="#">International Events and Law Conferences</a></p>	<p><a href="#">Practising Law Institute</a></p>
<p><a href="#">American Bar Association</a></p>	<p><a href="#">New York Bar Association</a></p>	<p><a href="#">Hieros Gamos Worldwide Law Events</a></p>

## 10 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages. Italics indicate ATTA members.

### Domestic

<p><b>The Conversation</b></p> <p>ATTA Member contribution(s)</p> <ul style="list-style-type: none"> <li>• <i>Michael Blissenden</i> - '<a href="#">Record corporate fines don't deter: here's a 'frank' fix to make penalties bite</a>', 29 September 2020</li> <li>• <i>Dale Boccabella</i> - '<a href="#">Testamentary trusts are one of the last truly outrageous means of avoiding tax</a>', 25 September 2020</li> <li>• <i>Jonathan Barrett</i> - '<a href="#">The major parties' tax promises are more about ideology and psychology than equity or fairness for New Zealanders</a>', 22 September 2020</li> </ul> <p>Articles of Interest</p> <ul style="list-style-type: none"> <li>• Saul Eslake - '<a href="#">Tasmania's tax system is broken: here are three ways to fix it</a>', 16 September 2020</li> <li>• Richard Holden - '<a href="#">The budget's tax cuts have their critics, but this year they make fiscal sense</a>', 6 October 2020</li> <li>• Peter Martin - '<a href="#">Budget 2020: promising tax breaks, but relying on hope</a>', 6 October 2020</li> </ul>	<p><b>Tax and Transfer Policy Institute</b></p> <p><a href="#">Austaxpolicy.com Blog</a></p> <p>Articles of Interest</p> <ul style="list-style-type: none"> <li>• Lekha Chakraborty, Veena Nayyar and Komal Jain - 'Gender Budgeting in Multi-level Governance', 28 September 2020</li> <li>• Bruce Bradbury and Peter Whiteford - 'Unemployment Support Will Be Slashed by \$300 This Week. This Won't Help People Find Work', 22 September 2020</li> <li>• Emma Dawson - 'Budget Forum 2020: COVID-19 Strengthens Australians' Belief in the Fair Go, Government Should Support the Vulnerable', 30 September 2020</li> </ul> <p><b>Melbourne Legal Studies Research Paper</b></p> <p>ATTA Member contribution(s)</p> <ul style="list-style-type: none"> <li>• Rachel Davies and Miranda Stewart - '<a href="#">The Gatekeeper Court: For the Revenue or for the Taxpayer?</a>', 2019, Research Paper No 828</li> </ul>
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### Australian Tax Review

[2020 | Volume 49 | Issue 2](#)

ATTA Member contribution(s)

- *Kerrie Sadiq and Dale Pinto* - 'Editorial: Domestic Tax and Stimulus Measures in the Spotlight'
- *Dale Boccabella* and Kayleen Manwaring - 'Deemed Dividend Rules: Tax-Free Extraction of Profits from Companies and Exploitation of Structural Foundations of the Income Tax Regime'
- *A Kayis-Kumar, J Noone, F Martin and M Walpole* - 'Pro Bono Tax Clinics: An International Comparison and Framework for Evidence-based Evaluation'

### Other Publications of Interest

ABC Triple J Hack

- James Purtill - '[Young people are 'owed a COVID debt'. Is it time to tax big inheritances?](#)', 1 October 2020

Melbourne University Press

- Paul Tilley- '[Changing Fortunes: A History of the Australian Treasury](#)', 2019 (book)

Commissioner's Opening Statement - Senate Select Committee on COVID-19

- [17 September 2020](#)

### Journal of Tax Administration

2019 | Volume 5 | Issue 2

Other Articles of Interest

- Daisy Ogembo - '[Are presumptive taxes a good option for taxing self-employed professionals in low & middle-income countries?](#)'

### Canadian Public Policy

2019 | Volume 45 | Issue 3

Other Articles of Interest

- Tracy Snoddon and Trevor Tombe - '[Analysis of Carbon Tax Treatment in Canada's Equalization Program](#)'

### International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

### Asia-Pacific Tax Bulletin

[2020 | Volume 26 | Issue 3](#)

ATTA Member contribution(s)

- *Vincent Ooi* - 'Tax Implications of COVID-19 in Singapore'

### The Dynamics of Taxation: Essays in Honour of Judith Freedman

[2020 | Oxford Hart Publishing](#)

ATTA Member contribution(s)

- *Michael Walpole* - 'Chapter 15: Trends in Tax Administration'

Note: 20% discount for ATTA News readers under code ATTA20 to be used on the site valid until 30 November 2020.

### World Dictionary of Legal Abbreviations

2020 | Volume 1 Update | William S Hein & Co Inc

ATTA Member contribution(s)

- *Colin Fong* - 'Australia' and 'New Zealand'

### Recent Publications

Other Books of Interest

- Werner Haslehner, Katerina Pantazatou, Georg Kofler and Alexander Rust (ed) - '[Guide to the Anti-Tax Avoidance Directive](#)', 2020
- Reuven S Avi-Yonah - '[Advanced Introduction to International Tax Law](#)', 2019, 2nd edition
- Carlo Garbarino - '[Taxation of Bilateral Investments: Tax Treaties after BEPS](#)', 2019
- Emmanuel Saez and Gabriel Zucman - '[Triumph of injustice: how the rich dodge taxes and how to make them pay](#)', 2019

Other General Publications

- Ariel Jurow Kleiman, Amy K Matsui and Estelle Mitchell – '[Faulty foundations of the Tax Code: gender and racial bias in our tax laws](#)', November 2019

### Oxford University Centre for Business Taxation

- Michael P Devereux et al - '[Residual Profit Allocation by Income](#)', Working Paper No 19/01

## 11 | QUOTABLE QUOTES

“London: Ireland's Supreme Court has ruled that bread sold by the fast food chain Subway contains so much sugar that it cannot be legally defined as bread.

The ruling came in a tax dispute brought by Bookfinders Ltd, an Irish Subway franchisee, which argued that some of its takeaway products – including teas, coffees and heated sandwiches – were not liable for value-added tax.

"Subway's bread is, of course, bread," the company said in response to the ruling.

A panel of judges rejected the appeal on Tuesday, ruling that the bread sold by Subway contains too much sugar to be categorised as a "staple food", which is not taxed.

"There is no dispute that the bread supplied by Subway in its heated sandwiches has a sugar content of 10 per cent of the weight of the flour included in the dough, and thus exceeds the 2 per cent specified," the judgement read.

The law makes a distinction between "bread as a staple food" and other baked goods "which are, or approach, confectionery or fancy baked goods", the judgement said."

Read more here: [Sydney Morning Herald](#)

“At federation the states all had some form of death duty tax. Then during the First World War the Commonwealth introduced its own death tax and so death was being taxed on two fronts.

In the 1950s, 1960s and 1970s it was a very unpopular tax, mainly paid by the middle and lower income population because wealthy Australians and their slick lawyers devised schemes so their wealth would not be subject to the tax. The family fortune would pass to the next generation. For rural families, this was essential if the farm was to be maintained within the family.

Accordingly it was seen as a very unfair tax. Taxes that are unpopular rarely work because the overall national system requires voluntary compliance and, at least in the past, Australians have been very firm; wealth was created after paying tax and should not be taxed again.”

Source: Robert Gottliebsen, ‘Death taxes: an unwelcome ghost returns’ The Weekend Australian, 19-20 September 2020, p 25

“Davies and Stewart’s analysis is based on a database (which they created) of reported tax cases heard by the Federal Court and the Federal Court of Appeal between 1977 (when the former court was established) and June 2, 2019. Their research offers some interesting statistics. For example, tax cases represent less than 3 percent of all reported judgments (there are 30 to 50 reported tax judgments each year). Tax disputes seem to be more frequently finalized and settled earlier in the process than other kinds of disputes, such that, over time, fewer tax cases are being decided by the courts. Only 19 of 135 Federal Court judges who have decided tax cases since 1977 were women. Approximately 25 percent of current judges have never delivered a tax judgment. The article offers many other fun facts of this kind.

The article also tracks details on court outcomes (taxpayers win on at least one issue in just over 43 percent of the cases) and on substantive issues in dispute. For example, approximately 30 percent of the income tax cases concerned the determination of assessable income; 29 percent concerned deductions; and 13 percent concerned the taxation of trusts.”

Read more here: [Canadian Tax Journal](#)





## ISSUE HIGHLIGHTS

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“The budget should be balanced not by more taxes, but by reduction of follies.”

- *Herbert Hoover*

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## 01 | PRESIDENTIAL COLUMN

### *President's Note*

Hello and welcome to the November newsletter, I hope everyone is well as the marking process is starting for some of us and finishing for others.

By way of update, we did not get any volunteers to run a symposium in Australia in January. I fully appreciate that everyone has had an extremely challenging year and there is little capacity to take on yet more work. So, we will continue with just the New Zealand symposium in Canterbury. Adrian Sawyer has outlined some more information on this at item [3] below. Please note abstracts are due by 11 December 2020.

I have attended several of the online tax seminars organised by Miranda Stewart at Melbourne Law School and recommend these as a great way to connect with ATTA members and see

some great research presentations in an engaging forum. Please see [here](#) and at items 7 and 9 below for more detail. The next seminar is scheduled for 26 November 2020 where Sonali Walpola will present. Miranda will be continuing the Tax Research Seminar Online series in 2021.

Colin will be updating his list of Australian and NZ tax PhDs in December, so please forward details of any recent PhD completions or new registrations to him (see more at item 6 below).

We will not be making a call for Expressions of Interest for the OUP/ ATTA Doctoral Series for 2020/21. However, we hope that we may be able to do so in 2021/22.



With best wishes

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

Both the ATTA 2021 conference organising committee and the ATTA Executive have reached the unprecedented decision that we are postponing the January 2021 conference to 19-21 January 2022 (equivalent dates) due to the impact of COVID-19. The decision comes with a background of borders being closed and likely at best to open to Australia only (meaning a large portion of our attendees from outside the region could not come), and with many academics and graduate students facing reduced conference budgets and thus being unable to attend.

*Adrian Sawyer*

## 03 | ATTA NEW ZEALAND SYMPOSIUM 2021

Due to the well-known events of the past year, the annual ATTA conference planned for Christchurch in January 2021 has been postponed until January 2022. In lieu of the 2021 conference, you are invited to participate in a one-day symposium to be held at the University of Canterbury, Christchurch, New Zealand. Participants will have the opportunity either to attend virtually (via 'Zoom') or to attend in person. Those wishing to attend virtually will need to register prior to 20 January 2021 in order to be provided with a Zoom link.

This symposium provides an opportunity for academics to meet (virtually or in person), and to present and to discuss their research. It will also provide a valuable opportunity for PhD students within our discipline to present their ongoing research and receive valuable feedback. There would be no particular 'theme' to the symposium, so all tax-related papers are welcome.

### *Abstracts*

Abstracts are required prior to the event to put together a programme. There would be no formal review of papers and no concurrent sessions. Abstracts are required by Friday, 11 December 2020.

### *Symposium Date*

The Christchurch symposium will be held on Wednesday, 20 January 2021.

### *Cost*

We anticipate a small cost for those attending in person to cover catering expenses. Online participation will be free of charge.

*Tentative Day Programme*

- Welcome
- Morning Presentations (with a morning tea break) 9am to 12 noon
- Lunch and mingling (1 metre apart) 12 noon to 1pm
- Afternoon Presentations (with an afternoon tea break) 1pm to 5pm

*Presentations*

Presentations will be limited in duration to half an hour each, being the usual 20 to 25 minutes presentation followed by time for comments/questions.

*Submission of papers*

Please submit your abstracts and/or an indication of your intention to attend to Andrew Maples ([andrew.maples@canterbury.ac.nz](mailto:andrew.maples@canterbury.ac.nz)). Abstracts must be received no later than 5.00 pm (NZT) on Friday, 11 December 2020. Acceptance will be notified by the following Friday, 18 December 2020.

## 04 | ARRIVALS, DEPARTURES AND HONOURS

### Honours



**Chloe Anne Burnett**

Congratulations to Chloe Anne Burnett of Sixth Floor Selborne/Wentworth Chambers, Sydney on being appointed Senior Counsel by the President of the New South Wales Bar Association on 30 September 2020. Chloe commenced practice at the New South Wales Bar on 16 April 2008. She practices principally in tax and revenue law, and also works in the areas of statutory construction, superannuation law, research and development law, alternative dispute resolution and disability discrimination law. Chloe has lectured in the LLM program at Sydney Law School each year since 2006 and regularly publishes articles in Australian and international journals and speaks at conferences in Australia and abroad. She obtained an LLM from New York University in 2005 and was awarded the Flora S and Jacob L Newman Prize for the highest mark in the international tax program. Chloe has presented

New South Wales Bar Association continuing professional development seminars regarding statutory interpretation. Prior to coming to the Bar she worked as a solicitor at Allens and as the Associate to a Federal Court Judge. [BCom LLB University of Sydney LLM New York University]. Some readers may have met Chloe at a number of ATTA conferences where she has presented papers.



**Andrew Mills**

The Tax Institute has announced the appointment of Andrew Mills CTA (Life) as Director, Tax Policy and Technical. Andrew stepped down as Second Commissioner at the Australian Tax Office (ATO) at the end of 2019. Andrew commenced his position on Tuesday 19 May, 2020.

In his years of public service at the ATO, Andrew took 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. With his extensive professional background and experience with the ATO, he is very understanding of the many issues our members wish to have 'on the table' for discussion and resolution.

Prior to his time as Second Commissioner, Andrew was a Director at Greenwoods & Freehills for more than 20 years and Managing Director of the firm from 2006 to 2011. Andrew is a former Governor of the Taxation Research Foundation. He has also spent time as an in-house corporate advisor, involved in Treasury and ATO engagement on behalf of industry bodies, as well as in a range of roles in the ATO in the 1980s. He is also currently a member of the Australian Executive Committee of the International Fiscal Association and a member of the Tax and Transfer Policy Institute Advisory Board. Andrew was a regular presenter at past ATTA conferences.

Source: The Tax Institute appoints former ATO Second Commissioner Andrew Mills as Director, Tax Policy and Technical, Media Release 14 May 2020





**Justice Simon Steward**

Justice Simon Steward (Federal Court of Australia 2018-2020) was appointed to the High Court of Australia replacing Justice Geoffrey Nettle in early December 2020. Justice Steward’s focus is on tax law. He completed his Master of Laws at the University of Melbourne in 2000 with a thesis on the Constitutional limitation of taxation powers. He was called to the Bar in 1999, where he quickly became involved in many leading tax cases, including Stone’s case, Linter Textiles and McNeil. He has been a Senior Fellow, lecturing on tax litigation at the University of Melbourne, since 2009. His expertise in tax law led him to the position of President of the Tax Bar Association between 2013 and 2014.

**05 | IN MEMORIUM: DENNIS MOODLEY**

It is with great sadness that I convey to fellow ATTA members of the passing of our wonderful friend Dennis Moodley. Dennis passed away suddenly on 10 October this year while playing soccer.

I first met Dennis about 15 years ago when ATTA was hosted at UNSW. Our mutual friend Katherine Ritchie, who many of you knew, introduced us and said this was Dennis’ first conference. In my normal shy style I burst out “So you are an ATTA virgin!”. Dennis stood for a second in shock and then laughed; we were good friends from that day on.

Dennis was highly competitive; whether that be study or sport. As the tradition was in those days (and I hope will return) we finished the ATTA conference with a “friendly” game of cricket and BBQ. The tradition was Australia against the rest of the world. Gordon (Cooper) asked me to captain the Australian side. I thought not a problem; at home I had been practicing my bowling and favourite sweep shot. Unfortunately Dennis was appointed captain for the rest of the world. What we didn’t know is that back in South Africa Dennis played district cricket. Not only was he a fantastic batsman but a fast bowler. In those days we used a real cricket ball and under arm was not allowed. I faced Dennis for Australia and the ball went past my head as I ducked and I won’t repeat the expletive. This went on ball after ball. I just wanted the over to be over!

Dennis was a man of style. He was always impeccable. I have attached one photo that only he could carry off. After a conference dinner he came back in his suit, with a beanie for his beloved Liverpool football team and fuzzy slippers, I assume belonging to his wife Tina.

Dennis and Katherine had been a great teaching and research teach team at AUT for many years before I joined them. Dennis had high standards and he and I constantly pushed that AUT tax meet the CPA and CAANX standards and we were often punished for rocking the boat.

Relatively recently Dennis left academia for private practice and built up a very successful albeit small practice. However he never gave up the dream of completing his PhD. He was focused on tax compliance and passionate about his idea that if we taught tax policy in schools the students would understand why we tax and be good compliant citizens. Unfortunately his dream will not happen.

He will be missed. No actually he is missed.

*Julie Cassidy*



## 06 | BULLETIN BOARD

### **National Tax Clinic Open Competitive Grant Program Consultation Paper**

The ATO is seeking feedback on the above consultation which broadly invites comments on the focus and activities of the National Tax Clinic program; factors affecting client eligibility; the grant selection process and funding model; and, the location and model of tax clinics.

The Closing Date for comment is 8 January 2021.

More information can be found on the [ATO website here](#).

### **Do you have a Bulletin Board item?**

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

### **Australian and New Zealand Tax and Related Doctoral Theses**

Since the ATTA News for December 2002, I have published an annual list, which contained details of Australian and New Zealand tax and related PhDs and SJDs completed and in progress.

During the past year, a number of doctoral theses were completed. Please notify me of any, which have commenced or have been completed and or have been accepted for publication. I hope to issue a new list in December 2020.

See the earlier issues for information required, i.e. Author, Title of thesis, Institution, Supervisor/s, expected date of completion (optional). For completed ones, if published, please supply the title, place of publication, publisher, date of publication. If available electronically, please supply the URL or where it can be found. If you wish to preview the list before publication, please let me know by email.

*Colin Fong*

### **Journal of Australian Taxation - Special Edition**

A special edition of the Journal of Australian Taxation has just been published ([www.jausttax.com.au](http://www.jausttax.com.au)) and it consists of individual articles from the 10 Australian universities that have established Tax Clinics as part of the National Tax Clinic Program, which was and continues to be funded by the Commonwealth Government. Curtin University established the Curtin Tax Clinic in Perth, Western Australia as a pilot program in 2018 which proved to be so successful that the program was expanded to all parts of Australia. Ten Australian universities were then selected by the Government, based on research and other criteria.

Each article in this special edition is written by the tax academics and tax clinic staff engaged in each of their tax clinics, with each article discussing the unique operating structures used in order to comply with the requirements of the Australian Government. The National Tax Clinic Program is an initiative funded by the Australian Government to help individuals, small businesses, not-for-profit organisations and charities that may not be able to afford professional advice and/or representation with their tax-related affairs. While each Tax Clinic operates independently, the program is supported by the Australian Taxation Office ('ATO').

Each contribution in this issue portrays how each Tax Clinic has put into practical operation these guidelines and provides insight into how this initiative has greatly enhanced access to our tax system for Australian taxpayers. I have closely followed the development of the Tax Clinics over the past couple of years and have kept in contact with the personnel doing the hard yards at the coalface of a number of the Tax Clinics. I am heartened to see the work being done. It is only through sheer determination of the academics, support staff and students that we can provide a valuable resource for those taxpayers in our community who are in need of tax help. As the editor of this special edition, I commend the authors of these excellent articles for their commitment to each of their Tax Clinics.

In 2021 the ATO will be calling for all interested organisations to submit an application for funding under a competitive grants program to commence in 2022. Please see more regarding the ATO Consultation [here](#).

*Professor Michael Blissenden*

Adjunct Professor School of Law, University of New England

## Vacancies

Dear Colleagues,

We are pleased to announce that the Institute for Austrian and International Tax Law, WU is offering two positions:

- teaching and research associate
- teaching and research associate with focus on Transfer Pricing

The deadline for applications is 9 December 2020.

If you would like to apply, or you know somebody who may be interested for the position as a teaching and research associate, please send your application only online under [www.wu.ac.at/jobs](http://www.wu.ac.at/jobs) (Reference Number 829), no later than 9 December 2020.

If you would like to apply, or you know somebody who may be interested for the position of a teaching and research associate with focus on TP, please send your application only online under [www.wu.ac.at/jobs](http://www.wu.ac.at/jobs) (Reference Number 830), no later than 9 December 2020.

We would be delighted if you applied for one of these positions and please kindly distribute this announcement to other qualified colleagues. For more information on the positions, please see our website under Further Information: [www.wu.ac.at/taxlaw](http://www.wu.ac.at/taxlaw) or direct your queries to Ms. Katharina Michner ([jobtaxlaw@wu.ac.at](mailto:jobtaxlaw@wu.ac.at)).

Kind regards,

Georg Kofler / Michael Lang / Alexander Rust / Josef Schuch / Karoline Spies / Claus Staringer / Pasquale Pistone / Alfred Storck / Jeffrey Owens / Maria Wimmer

## ATTA News Publishing Deadlines

Please note the following dates are approximate.

December Edition of ATTA News

- Items to the Editor by: 11 December 2020
- Publicly available on: 18 December 2020

January Edition of ATTA News

- Items to the Editor by: 8 January 2020
- Publicly available on: 15 January 2020

## 07 | CALL FOR SUBMISSIONS

**International Journal of Business and Social Science**

[Volume 11 | Issue 12](#)

**Ranking:** TBA

**Proposals Deadline:** 30 November 2020

**Publication Date:** 31 December 2020

International Journal of Business and Social Science (IJBS) is a monthly peer reviewed journal published by Center for Promoting Ideas (CPI), USA. It covers the areas of business and social science such as management, marketing, finance, economics, banking, accounting, human resources management, international business, hotel and tourism, entrepreneurship development, business ethics, international relations, law, development studies, population studies, history, journalism and mass communication, corporate governance, cross-cultural studies, public administration, psychology, sociology, women studies, social welfare, anthropology, linguistics, education and so on.

IJBS publishes original papers, review papers, conceptual framework, analytical and simulation models, case studies, empirical research, technical notes, and book reviews.

Early submissions will get preference in case of review and publication process.

Send your manuscript to the editor at [editor@ijbssnet.com](mailto:editor@ijbssnet.com).



## **Clinical Tax Education: International Handbook**

First Edition

**Ranking:** TBA

**Proposals Deadline:** 4 December 2020

**Publication Date:** 2022

**Proposed Editors:** Dr Amy Lawton (Lancaster University), *Donovan Castelyn* (Curtin University), David Massey (University of Central Lancashire), *Annette Morgan* (Curtin University).

Call for chapter contributions:

Tax Clinics are now established throughout the world. With recent clinical developments in the UK, Ireland, and Australia, it is a timely opportunity to bring together tax clinic scholarship. This is the aim of Clinical Tax Education, which will explore the benefits of clinics for our students and communities. The book particularly welcomes contributions on tax clinic projects but would also welcome contributions on novel projects that seek to bring tax, students, and our communities together.

Contributions should aim to discuss one of the following themes:

- Students (experience and contribution)
- Supervisors (project administration and the profession)
- State (relationships with tax authorities, government, and influence on policy)
- Society (clients and our local communities)

We would expect full contributions to be no longer than 6,000 words and would need to be submitted late 2021 for a target 2022 publication. We welcome proposals from anyone involved in a community tax project, including but not limited to academics, practitioners, policymakers and students.

If you would like to contribute a chapter to a book on this subject, please send a chapter proposal abstract of 250 words to Amy Lawton, [a.lawton1@lancaster.ac.uk](mailto:a.lawton1@lancaster.ac.uk). Your abstract should outline your project and how you will respond to one of the above themes. The deadline for proposals is Friday 4th December 2020. We hope to be provisionally in touch with authors in early 2021.

## **Melbourne Law School Tax Research Seminars Online - Expression of Interest 2021**

**Ranking:** N/A

**Manuscript Deadline:** N/A

**Seminar Date:** Throughout 2021

Based on the success of our Tax Research Seminars Online in 2020, we are continuing the monthly series in 2021. We are seeking expressions of interest to present your paper in the series in 2021.

The Seminars are held on the last Thursday of each month, between February to November (except June) at 3.30pm – 5.00pm (AEST). The seminars are run online as a Zoom meeting, with 25 to 30 minutes paper presentation followed by 10-15 minutes comments from a discussant selected by the Chair and then ample time for questions and discussion. We have space for the months April to November at this stage. A full written paper is required to be circulated before the seminar and is published in the series on the Event webpage hosted by the Tax Group.

The Tax Research Seminars Online series hosted by the Tax Group at Melbourne Law School aims to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the Asia Pacific region, as well as further afield.

The list of past and upcoming seminars, and papers, in 2020 can be viewed [here](#).

If you are wishing to present a Seminar in the series, please email your draft or working paper, if available, or your proposed title and abstract for consideration, and please identify your preferred timeslot, if any. At the time of the seminar, papers should be substantial drafts, or prepared for working paper, journal submission, under review or accepted for publication.

Submission & enquiries: Please email to [law-tax@unimelb.edu.au](mailto:law-tax@unimelb.edu.au)

**Bulletin for International Taxation**

[Call for Authors](#)

**Manuscripts Submission Deadline:** N/A

**Publication Date:** Monthly

IBFD's flagship journal examines policy changes and developments throughout the world and provides readers with the background and perspective to face the challenges of the contemporary tax landscape.

The journal is indexed in the American Economic Association's electronic bibliography (EconLit) and has been accepted for inclusion in the Scopus database.

[editors@ibfd.org](mailto:editors@ibfd.org)

**Austaxpolicy.com Blog (Tax and Transfer Policy Institute)**

[TTPI Working Papers and Policy Briefs](#)

**Manuscripts Submission Deadline:** Continually

**Publication Date:** Continually

[tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au)

## 08 | TAX LAW DEVELOPMENTS

### Australia

#### Federal Court of Australia

[Advanced Holdings Pty Limited as trustee for The Demian Trust v Commissioner of Taxation \[2020\] FCA 1479](#)

Davies J – 15 October 2020

Catchwords:

- Taxation – appeals under pt IVC of the *Taxation Administration Act 1953* (Cth) - whether beneficial interest in joint venture property created in joint venturers by joint venture agreement - no intention in joint venture agreement to create trust relationship - whether repayments under loan facility on revenue account - where loan facility replaced earlier loans used to acquire trading stock – whether original borrowings on revenue account – *Avco Financial Services Ltd v Commissioner of Taxation (Cth)* [1981] HCA 6; 150 CLR 510, *Thiess Toyota Pty Ltd v Commissioner of Taxation* [1978] 1 NSWLR 723 and *Federal Commissioner of Taxation v Cadbury-Fry Pascall (Aust) Ltd (in vol liq)* (1979) 10 ATR 55 distinguished – even if original borrowings were on revenue account subsequent refinancing was not in substitution but was undertaken to augment the capital of the taxpayer and related companies – borrowings and fees on borrowing facility not deductible expenses
- Trusts and trustees – whether valid appointment of trustee company – interpretation of trust deed and trust documents – no valid appointment of purported trustee company – whether company held property on constructive trust or as trustee de son tort – no trust arose on facts of case – company held property in its own right
- Taxation – circularity of present entitlements of beneficiaries under trust distribution – consideration of whether trustee liable to trustee beneficiary non-disclosure tax under s 102UK of *Income Tax Assessment Act 1936* (ITAA 1936) (Cth) – whether trust falls within “family trust” exclusion in s 102UC – family trust election validly made – election satisfied test in s 272-80(4A) of sch F of ITAA 1936 to apply to earlier year – whether s 99A of ITAA 1936 applies in context of circular present entitlements – construction of s 99A – trustee liable to taxation on additional income under s 99A of the ITAA 1936 as a result of circular entitlements

The court orders that:

1. Within 14 days the parties provide by email to the Chambers of Justice Davies a draft form of order in each of the related Federal Court proceedings giving effect to these reasons.
2. If the parties are not in agreement regarding an appropriate form of order as to costs, within 14 days each party is to file and serve written submissions of no more than three (3) pages and, subject to any further order, the Court will then determine the issue of costs on the papers.



[Victoria Power Networks Pty Ltd v Commissioner of Taxation \[2020\] FCAFC 169](#)

Logan, Colvin and Thawley JJ – 21 October 2020

Catchwords:

- Taxation – assessable income – income according to ordinary concepts – non-cash business benefits – where electricity distributors were required to connect customers to the electricity network upon request – where the connection works were carried out either by the distributor or by the customer – where, in relation to the first situation, if the connection was “uneconomic”, the customer paid a cash contribution to the distributor – whether the cash contribution was income according to ordinary concepts – where, in relation to the second situation, the customer was required to transfer the relevant assets to the distributor and received a rebate from the distributor – where, in relation to that situation, if the connection was “uneconomic”, the rebate was the estimated cost of construction less a customer contribution – whether the customer contribution was income according to ordinary concepts – whether the transferred assets constituted a non-cash business benefit – consideration of the amount to be included in the distributor’s assessable income pursuant to s 21A of the *Income Tax Assessment Act 1936* (Cth) – consideration of the arm’s length value of the transferred assets

The court orders that:

1. Each appeal be allowed in part.
2. The orders made in the original jurisdiction on 25 February 2019 be set aside.
3. In lieu thereof and in respect of each taxation appeal, it be ordered that: (a) the appeal against the respondent’s objection decision be allowed in part and the matter remitted to the respondent for amendment of the assessment concerned on the footing that the arm’s length value of the infrastructure assets transferred for the purposes of s 21A(2) of the *Income Tax Assessment Act 1936* (Cth) was the amount of the Rebate paid by each respective appellant (each respective distributor) to the customer; and (b) save as provided by sub-paragraph (a), the appeal be dismissed.
4. The parties file and serve, not later than seven days from the date hereof, either a consent in respect of costs of and incidental to the appeals and each of the taxation appeals or, failing consent, their respective submissions of not more than 5 pages as to the order sought in respect of costs, following or in default of which the Court will determine on the papers the order as to costs which ought be made.
5. Pending the determination of costs either by consent or as provided for by this order, all questions in respect of costs of each appeal and in the original jurisdiction be reserved.

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[Huang v Deputy Commissioner of Taxation \[2020\] FCA 1518](#)

Besanko J – 22 October 2020

Catchwords:

- Practice and procedure – application for a stay of the orders of the Full Court of the Federal Court – where freezing order made in relation to assets in Australia and overseas – where appellant has substantial assets in Hong Kong and China – where appeal allowed and order set aside with respect to overseas assets – where application made for special leave to appeal to the High Court of Australia – consideration of the prospects of success of the application for special leave – consideration of the balance of convenience

The court orders that:

1. The orders in paragraphs 4-8 inclusive made by the Full Court of the Federal Court of Australia on 28 September 2020 be stayed until the later of: (a) the date of the determination of the Deputy Commissioner of Taxation’s application for special leave to appeal to the High Court; or (b) in the event that special leave to appeal from the orders is granted, the date of the determination of that appeal.
2. The costs of the stay application be costs in the cause of any appeal.

[Tax Practitioners Board v Caolboy \[2020\] FCA 1559](#)

Wheelahan J – 29 October 2020

Catchwords:

- Civil penalties - admitted contraventions of the Tax Agents Services Act 2009 (Cth) - consideration of the contravening conduct and agreed pecuniary penalties - individual contravener - objectively serious contraventions - difficult personal circumstances - general deterrence - agreed pecuniary penalties ordered.

The court orders that:

1. The respondent, for a period of three years from the date of this order, if requested to provide to another person or entity a service whether by her employees, agents or however otherwise, that relates to one or more of: (a) advising another person or entity in relation to entitlements, liabilities or obligations in relation to an Australian taxation law; (b) completing or lodging for another person or entity a return, statement or correspondence with the Commissioner in relation to an Australian taxation law; or (c) representing another person or entity in their dealings with the Commissioner of Taxation, must, before providing or agreeing to provide the said service, and unless then registered as a tax agent pursuant to the Tax Agent Services Act 2009 (Cth), inform the person of the matters referred to in paragraphs [1]-[8] of Form A annexed to these orders and, if the person or entity still requests the service be performed by the respondent: (i) have the person or entity complete and sign a copy of Form A annexed to these orders; (ii) retain a copy of the completed and signed form for a period of three years; and (iii) provide any such completed and signed form to the applicant within 14 days of its request.
2. The respondent, for a period of three years from the date of this order, must not, unless then a registered tax agent pursuant to the Tax Agent Services Act, make any reference, in connection with the description or promotion of any services she offers to provide, to matters involving taxation or the Australian Tax Office unless that reference is a statement, or is closely accompanied by another statement, to the effect that she is not registered pursuant to the Tax Agent Services Act to provide tax agent services or BAS services.
3. The respondent pay penalties in the total amount of \$40,000 to the Commissioner of Taxation, who is to receive those penalties on behalf of the Commonwealth. Those penalties are to be paid, as follows: (a) \$5,000 on or before 29 October 2023; (b) \$5,000 on or before 29 October 2024; (c) \$5,000 on or before 29 October 2025; (d) \$5,000 on or before 29 October 2026; (e) \$5,000 on or before 29 October 2027; (f) \$5,000 on or before 29 October 2028; (g) \$5,000 on or before 29 October 2029; and (h) \$5,000 on or before 29 October 2030.
4. There be no order as to costs.

---

[Commissioner of Taxation v Glencore Investment Pty Ltd \[2020\] FCAFC 187](#)

Middleton, Steward and Thawley JJ – 6 November 2020

Catchwords:

- Taxation – transfer pricing – appeal from judgment of Federal Court of Australia setting aside objection decisions in respect of amended assessments issued for years of income ended 31 December 2007 to 2009 – where Australian resident subsidiary of taxpayer sold copper concentrate to its ultimate Swiss resident parent in 2007 to 2009 years after making determinations under Div. 13 of *Income Tax Assessment Act 1936* (Cth) and Subdiv. 815-A of *Income Tax Assessment Act 1997* (Cth) – whether learned primary judge erred in concluding amended assessments wholly excessive – appeal court role in transfer pricing case – capacity to reconstruct transaction under Div. 13 and Subdiv. 815-A – personality of parties to hypothetical contract under Div. 13 and Subdiv. 815-A – role of comparable agreements in transfer pricing case – whether adoption of price sharing formula represented an arm’s length outcome – whether price sharing rate used was an arm’s length rate – whether arm’s length seller might be expected to have required discount for quotational period optionality back pricing term – whether freight allowance for 2009 year represented an arm’s length allowance

The court orders that:

5. The parties are to confer and, if agreement can be reached, provide the Court with orders for final relief within seven days hereof, or failing that, each party shall file written submissions on the issue of the form of final relief limited to 10 pages in length.

[Commissioner of Taxation v Lane \[2020\] FCAFC 184](#)

Allsop CJ, Perram and Farrell JJ – 6 November 2020

Catchwords

- Bankruptcy and insolvency – exercise of bankrupt trustee’s right of exoneration from trust assets – discussion of the nature of the right of exoneration – whether right of exoneration “property divisible among the bankrupt’s creditors” or trust property – whether the proceeds of the right of exoneration are to be distributed to all creditors or only to trust creditors – whether the priority regime in s 109 of the *Bankruptcy Act 1966* (Cth) applies to the proceeds of the right of exoneration
- Bankruptcy and insolvency – where bankrupt held assets in his capacity as trustee of a trading trust – where proceeds from sale of trust assets distributed to trust creditors – where trust creditors claim on personal estate of bankrupt – whether in distribution of personal assets of bankrupt “hotchpot” principle applies
- Bankruptcy and insolvency – recovery of preference payment – where trustee exercised right of exoneration to discharge taxation liability – where payment void under s 122 of the *Bankruptcy Act 1966* (Cth) – whether proceeds from preference recovery action are to be distributed to all creditors or only to trust creditors

The court orders that:

1. Within 14 days, in each matter the parties file an agreed draft minute of order disposing of the matter and restating the terms of the advice in accordance with the judgment of the Court, granting any necessary extension of time in which to file an application for leave to appeal, granting leave to appeal, allowing the appeal on the first substantive question as to the application of ss 108 and 109 of the *Bankruptcy Act 1966* (Cth), and dismissing the appeal as to the questions of hotchpot and the use of the proceeds of the preference recovery action. If agreement is not possible, competing short minutes are to be filed, accompanied in that case by brief submissions as to the competing positions.

---

**New South Wales**

[Chief Commissioner of State Revenue v Benidorm Pty Ltd \[2020\] NSWCA 285](#)

Meagher JA at [1], Leeming JA at [2], Payne JA at [117] – 13 November 2020

Catchwords

- Revenue – stamp duties – declaration of trust – whether document styled “Declaration of Trust by Nominee” merely acknowledged position after grant of probate and resealing of grant – dutiable transaction - whether mere acknowledgement a dutiable transaction – significance of *Duties Act 1997* (NSW) being tax on transactions, rather than tax on instruments
- Precedent – precedential authority of dissenting judgment – precedential authority of statements applicable to earlier legislation – precedential authority of points assumed without argument
- Trusts – property held on trust for beneficiary – beneficiary’s will appointed his executor as sole beneficiary of his estate – effect on trust of grant of probate of will and resealing in NSW – estate not fully administered – nature of obligations owed by trustee to executor who was also sole beneficiary of deceased estate – construction of declaration of trust – whether document merely acknowledged existing state of affairs

The Court (Leeming JA, Meagher and Payne JJA agreeing) held, dismissing the appeal

*Colin Fong*

## 09 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

#### [The Tax Summit: Project Reform](#)

**Date:** 24-25 November 2020

**Location:** Online

**Cost:** \$695+

**Theme:** A Case for Change

#### **ATTA 2021 Conference**

Please see more information contained at items 2 and 3 above.

#### [The Tax Institute](#)

[Law Council of Australia](#)

[Australian Conference Alerts](#)

#### **Melbourne Law School Tax Research Seminars Online**

The tax research seminar online series hosted by the Melbourne Law School, aimed to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the region. The seminars are run online as a Zoom meeting, with 25 to 30 minutes paper presentation followed by comments from a discussant and then ample time for questions and discussion. Dates and topics for 2020 seminars are below:

- 26 November 2020: Dr Sonali Walpola, ANU, 'The taxation of capital gains in trusts after Bamford: A critical evaluation of the streaming regime in Subdiv 115-C ITAA97', with Discussant Dr Mark Brabazon, University of Sydney and NSW Bar. Chaired by Professor Miranda Stewart.

If you are interested in attending these events please email [law-tax@unimelb.edu.au](mailto:law-tax@unimelb.edu.au).

#### **14th International Conference on Tax Administration**

**Date:** 23-24 November 2021

**Location:** Hilton, Sydney

**Cost:** TBA

**Theme:** Tax Administration at the Frontier

For the first time this prestigious biennial event that brings together leading tax administrators, academics and practitioners from around the globe will be a combination of face to face and virtual participation. In keeping with these challenging times we have chosen these dates to maximise the option of you being able to join us in person but with the flexibility to join us virtually if you can't.

During this two-day event, conference speakers will present on the latest developments and innovations including the central role of tax administrations in governments' responses to the pandemic: cutting-edge initiatives in service delivery and compliance including digital and data use, tap and go, and artificial intelligence; data policy, ethical data exploitation, cyber security and new developments in regulating data platforms; globalisation of revenue administration; tax dispute resolution and new approaches to protecting the vulnerable including the elderly, impaired and those in remote areas; and managing the latest frontier adapting tax administration to support Governments' responses to the pandemic and their transition strategies to a 'new normal' as they wrestle with the economic and social fallout.

We will be back in touch in March 2021 when we will open registrations for face to face and online attendance. If you are unable to make the 2021 dates, we can arrange a full reimbursement and will reimburse the difference for any attendees who would now like to transfer their registration to the online option. Online tickets will be available for sale from March 2021.

Presenters who previously had papers accepted please note we will be in touch to advise you of the new deadline for papers in case you want to refresh yours to take account of recent extraordinary developments!

Please hold the dates so you can join us to hear from leading academics, policy makers and practitioners about current and future global trends

Conference organisers have secured with the Hilton a special delegate rate of 10% off the advertised day rate. To book, please visit here or call on +61 (0)2 9266 2000 referring to group code GUNSWD for a discounted rate (10% off from hotel best available rate).

Contact: [Maree Magafas](#), UNSW Business School



## International

Various international events happening in the foreseeable future are listed below.

<p><a href="#"><u>International Fiscal Association Virtual Program</u></a></p> <p><b>Date:</b> 18-25 November 2020  <b>Location:</b> Online  <b>Cost:</b> TBA  <b>Theme:</b> TBA</p>	<p><a href="#"><u>Tax Administration Research Centre 8th Annual (Virtual) Conference</u></a></p> <p><b>Date:</b> 15-17 December 2020  <b>Location:</b> Online  <b>Cost:</b> Free  <b>Theme:</b> TBA</p>	<p><a href="#"><u>Global Tax Symposium</u></a></p> <p><b>Date:</b> 10 December 2020  <b>Location:</b> Online  <b>Cost:</b> Free  <b>Theme:</b> TBA</p>
<p><a href="#"><u>5th International Taxpayer Rights Conference</u></a></p> <p><b>Date:</b> Postponed to 6-7 October 2021  <b>Location:</b> Pretoria, South Africa  <b>Cost:</b> USD\$325  <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries</p>	<p><a href="#"><u>Canadian Tax Foundation</u></a></p>	<p><a href="#"><u>Institute for Fiscal Studies</u></a></p>
<p><a href="#"><u>International Fiscal Association Congress</u></a></p> <p><b>Date:</b> Postponed to 10-15 September 2022  <b>Location:</b> Cancun, Mexico  <b>Cost:</b> Unknown  <b>Theme:</b> TBA</p>	<p><a href="#"><u>Institute for Austrian and International Tax Law</u></a></p>	<p><a href="#"><u>International Bureau of Fiscal Documentation</u></a></p>
	<p><a href="#"><u>International Fiscal Association</u></a></p>	<p><a href="#"><u>International Tax Planning Association</u></a></p>
	<p><a href="#"><u>International Events and Law Conferences</u></a></p>	<p><a href="#"><u>Practising Law Institute</u></a></p>
	<p><a href="#"><u>New York Bar Association</u></a></p>	<p><a href="#"><u>Hieros Gamos Worldwide Law Events</u></a></p>
	<p><a href="#"><u>International Bar Association</u></a></p>	<p><a href="#"><u>American Bar Association</u></a></p>

## 10 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages. Italics indicate ATTA members.

### Domestic

#### The Conversation

ATTA Member contribution(s)

- Janine Dixon and *Helen Hodgson* - '[New modelling finds investing in childcare and aged care almost pays for itself](#)', 19 October 2020
- *Miranda Stewart* - '[Blink and you'll miss it: what the budget did for working mums](#)', 28 October 2020

#### Tax and Transfer Policy Institute (TTPI)

[Austaxpolicy.com Blog](#)

ATTA Member contribution(s)

Articles of Interest

- Patricia Apps and Ray Rees – 'How Equalized Household Incomes Are Misinforming Tax and Transfer Policy', 26 October 2020
- Zareh Asatryan and Armenak Antinyan – 'Nudges Are No Substitutes for Classical Economic Policy Instruments', 9 November 2020
- Jonathan Barry Forman and Roberta Mann – 'Can Tax Policy Create Sustainable Intergenerational Equity?', 12 November 2020

#### TTPI Budget Forum 2020

[Various Articles](#)

ATTA Member contribution(s)

- Monica Costa, *Helen Hodgson*, Siobhan Austen and Rhonda Sharp – 'Economic Security for Older Partnered Women and Widows: Fixing Gaps in Australia's Superannuation System', 13 October 2020
- *Sonali Walpola* and Yuan Ping – 'Progressivity and the Personal Income Tax Plan', 22 October 2020
- *Helen Hodgson* – 'Economic Stimulus through a Gender Lens: Why the Budget Did Not Deliver', 29 October 2020
- *Miranda Stewart* – 'Blink and You'll Miss It: What the Budget Did for Working Mums', 30 October 2020
- *John Minas* and *Brett Freudenberg* – 'Australia's 50% capital gains tax discount: Policy oversight?', 3 November 2020

Articles of Interest

- John Hewson – 'Talk of Aspiration Is Not Borne Out in Federal Budget Papers', 15 October 2020
- John Freebairn – 'Asymmetric Taxation of Business Income and Losses', 14 October 2020



#### Journal of Australian Taxation

[2020 | Volume 22 | Issue 1](#)

ATTA Member contribution(s)

- *Celeste M Black* – 'Taxing Energy or a Road User Charge? Australia's Fuel Tax System at the Crossroads'

Articles of Interest

- Harry Waddell – 'New Zealand's Look-Through Company Regime And Compliance Costs: Through the Eyes of the Practitioner'
- Zaif Hassan Fazal – 'Tax Competition: A Blessing in Disguise for Small Countries'

#### Journal of Australian Taxation - Tax Clinic Special Edition

[2020 | Volume 22 | Issue 2](#)

ATTA Member contribution(s)

- *Donovan Castelyn*, *Stephanie Bruce* and *Annette Morgan* – '2019 National Tax Clinic Project: Curtin University – Curtin Tax Clinic'
- *Sunita Jogarajan*, *Kate Fischer-Doherty* and *Julian Panetta* – '2019 National Tax Clinic Project: Melbourne Law School Tax Clinic'
- *Ann Kayis-Kumar*, *Gordon Mackenzie* and *Michael Walpole* – 'Interprofessional Collaborative Practice in Pro Bono Tax Clinics: A Case Study Approach'
- *Brett Freudenberg*, *Colin Perryman*, *Kristin Thomas* and *Melissa Belle Isle* – 'The Griffith Tax Clinic'
- *John McLaren* – '2019 National Tax Clinic Project: The University of Tasmania Tax Clinic'
- *Connie Vitale* and *Michelle Cull* – '2019 National Tax Clinic Pilot Project: Western Sydney University'
- *Robert B Whait* – '2019 National Tax Clinic Project: UniSA Tax Clinic'
- *Van Le* and *Tina Hoyer* – '2019 National Tax Clinic Project: James Cook University Tax Clinic'
- *Indra Abeysekera* – 'National Tax Clinic Program in the Northern Territory, Australia: A Project Model Innovation'
- *Ben Raines* and *Sonali Walpola* – '2019 National Tax Clinic Project: The ANU Tax Clinic'

#### Revenue Law Journal

[2020 | Volume 27 | Issue 1](#)

ATTA Member contribution(s)

- *Aurelio Gurrea-Martinez* and *Vincent Ooi* – 'The Tax Treatment of Haircuts in Financial Reorganizations'

## Tax and Transfer Policy Institute

### [Working Papers](#)

#### Papers of Interest

- Andrew Carter – ‘Does the early release of retirement savings prolong labour market participation for workers approaching retirement? Evidence from Australia's 'Transition to Retirement Income Streams' program’
- Jannet F Jacob – ‘Child responsive budgeting as a public finance management tool: A case of Karnataka, India’

## Tax Specialist

### [2020 | Volume 24 | Issue 2](#)

#### ATTA Member contributions

- *Donovan Castelyn* and Stephanie Toutountzis – ‘Tax challenges of the digital economy - a review of the OECD's proposed new approach’

## Taxation in Australia

### [2020 | Volume 55 | Issue 4](#)

#### ATTA Member contributions

- *Peter Godber* – ‘New delivery models for our trusted events’

## Taxation in Australia

### [2020 | Volume 55 | Issue 3](#)

#### ATTA Member contributions

- *Peter Godber* – ‘Accepting and embracing change’

## Revenue Law Journal

### [2019 | Volume 26 | Issue 1](#)

#### Articles of Interest

- Dylan Mudhar – ‘The Meaning of ‘Associate’: An Analysis of the Outcomes of Commissioner of Taxation v BHP Billiton (2019)’

## Revenue Law Journal

### [2018 | Volume 25 | Issue 1](#)

#### Articles of Interest

- Jierui (Jerry) Zhan – ‘An Outlook on Intangible Assets and Transfer Pricing in China’
- Fareed Moosa – ‘Comparison Between the Modalities of Interpreting Tax Legislation Applied in South Africa and Australia’
- Milla Ivanova – ‘The Multilateral Instrument: Avoidance of Permanent Establishment Status and the Reservations on behalf of Australia and the UK’



YouTube: 'Bryan Bruce asks Prof Lisa Marriott three questions', 21 March 2020

## International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

### Kluwer International Tax Blog

#### [Various Articles](#)

#### ATTA Member contribution(s)

- *Vincent Ooi* – '[Singapore's Proposed Approach to Tackling Missing Trader Fraud](#)', 22 September 2020

### Controlled Foreign Company Legislation

#### [2020 | IBFD](#)

#### ATTA Member contribution(s)

- *Richard Krever* – ‘Chapter 1: Controlled Foreign Company Legislation: General Report 3’
- *Richard Krever and Kerrie Sadiq* – ‘Chapter 4: Controlled Foreign Company Legislation in Australia’
- *Andrew MC Smith and Adrian J Sawyer* – ‘Chapter 25: Controlled Foreign Company Legislation in New Zealand’

### Recent Publications

#### Books by ATTA Members

- Jagdeep Singh-Ladhar – '[Water allocation law in New Zealand: lessons from Australia](#)', 2020

#### Other Books of Interest

- Arvid Skaar – '[A Permanent establishment: erosion of a tax treaty principle](#)', 2020
- Niklas Schmidt, Jack Bernstein, Stefan Richter and Lisa Zarlenga (eds) – '[Taxation of crypto assets](#)', 2020

#### Other General Publications

- Anthony Seve, Peter Austin and Ruth Wright – '[Australian Taxation Office audit focus on arrangements involving intangibles](#)', May/June 2020
- Jeffrey Owens and Bernd Schlenker – '[What is the link between COVID-19 and illicit financial flows?](#)', 2020
- OECD – '[Analysis of tax treaties and the impact of the COVID-19 crisis](#)', 3 April 2020
- Jonathan H Choi – '[An Empirical study of statutory interpretation in tax law](#)'

Special Book Deals for ATTA Members

- Dominic de Cogan - '[Tax law, state-building and the constitution](#)', 2020 - Discount Price: £48. Use the code UG6 at the checkout to get 20% off your order

Other Articles of Interest

- Thierry Obrist and Roland Pfister – 'Tax treatment of cryptocurrency holders and miners in the era of virtual currencies from a multijurisdictional and Swiss perspective' [2019] ELEC 443; in Daniel Kraus, Thierry Obrist and Olivier Hari (Eds) - 'Blockchains, smart contracts, decentralised autonomous organisations and the law', 2019

**British Tax Review**

[2020 | Issue 4](#)

**Canadian Tax Journal**

[2020 | Volume 68 | Issue 3](#)

**Bulletin for International Taxation**

[Special Issue: Technology, a Key Enabler for Tax Transformation](#)

## 11 | QUOTABLE QUOTES

"I think there's a significant risk that some of the gold held within the Perth Mint by customers of the Euro Pacific Bank may be held beneficially for criminals in other parts of the world." John Chevris, former AFP financial crime investigator

Source: Charlotte Grieve, Nick McKenzie and Joel Tozer, 'A day when tax sleuths united in global hunt', *Sydney Morning Herald*, 19 October 2020 pp 8-9 at 9



Source: [Sydney Morning Herald](#)



## ISSUE HIGHLIGHTS

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["We wish you a Merry Christmas and a Happy New Year!"](#)

- ATTA Executive

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## 01 | PRESIDENTIAL COLUMN

### President's Note

Hello and welcome to the December newsletter.

2020 has indeed been an unusual year. It has been sobering to hear of the many tax colleagues who will be leaving academia over the next few months. While many are moving to exciting new opportunities, we will miss the contributions from the many academics who have enriched our ATTA community. However, we hope that anyone leaving academia will remain part of our tax whānau (community).

We will have an ATTA Annual General Meeting at the Christchurch symposium in January. The agenda is at point [4] of the newsletter. This will take place on Wednesday, 20 January at 4.00pm NZ time (2.00pm AEST). We encourage ATTA members to attend via Zoom. The link is here: <https://unsw.zoom.us/j/81183125555>.

As we will need to make quorum at this meeting, if you are not attending the symposium in person, would you

please send me a brief email to let me know if you will be zooming in ([lisa.marriott@vuw.ac.nz](mailto:lisa.marriott@vuw.ac.nz)). This way we can monitor attendance and make sure we have the requisite membership in attendance. Many thanks.

As you will be aware, our long-standing newsletter editor Colin Fong is planning on stepping down in the next month or two. As part of the transition, we are seeking your views on the ATTA Newsletter. We have a very brief (four question) survey that we would be grateful if you would complete. It will ask you how frequently you would like to receive the newsletter, and three questions about content. We expect it will take about 2 minutes to complete. The survey will remain open until 12 January 2021. Your responses will inform how the ATTA Newsletter looks in the future. Thanks in advance for your contribution. Here is the survey link (you may need to cut and paste this into your browser): <http://vuw.qualtrics.com/jfe/form/>



[SV\\_3wMssPC2IXyTabr](#)

We congratulate Christina Allen as the award winner of the Promoting Women in Tax Academia Scholarship this year.

I hope you all will find some space to rest and relax over the next few weeks.

Wishing you all the best until we talk again in 2021.

With best wishes

Lisa

*Lisa Marriott*  
President – ATTA

## 02 | ATTA'S 33<sup>RD</sup> ANNUAL CONFERENCE

Both the ATTA 2021 conference organising committee and the ATTA Executive have reached the unprecedented decision that we are postponing the January 2021 conference to 19-21 January 2022 (equivalent dates) due to the impact of COVID-19. The decision comes with a background of borders being closed and likely at best to open to Australia only (meaning a large portion of our attendees from outside the region could not come), and with many academics and graduate students facing reduced conference budgets and thus being unable to attend.

*Adrian Sawyer*

## 03 | ATTA NEW ZEALAND SYMPOSIUM 2021

Due to the well-known events of the past year, the annual ATTA conference planned for Christchurch in January 2021 has been postponed until January 2022. In lieu of the 2021 conference, you are invited to participate in a one-day symposium to be held at the University of Canterbury, Christchurch, New Zealand. Participants will have the opportunity either to attend virtually (via 'Zoom') or to attend in person. Those wishing to attend virtually will need to register prior to 20 January 2021 in order to be provided with a Zoom link.

This symposium provides an opportunity for academics to meet (virtually or in person), and to present and to discuss their research. It will also provide a valuable opportunity for PhD students within our discipline to present their ongoing research and receive valuable feedback. There would be no particular 'theme' to the symposium, so all tax-related papers are welcome.

### Abstracts

Abstracts are required prior to the event to put together a programme. There would be no formal review of papers and no concurrent sessions. Abstracts were required by Friday, 11 December 2020.



#### *Symposium Date*

The Christchurch symposium will be held on Wednesday, 20 January 2021.

#### *Cost*

We anticipate a small cost for those attending in person to cover catering expenses. Online participation will be free of charge.

#### *Tentative Day Programme*

- Welcome
- Morning Presentations (with a morning tea break) 9am to 12 noon
- Lunch and mingling (1 metre apart) 12 noon to 1pm
- Afternoon Presentations (with an afternoon tea break) 1pm to 5pm

It is intended that the draft programme will be available in the week of 21 December 2020. A copy will be emailed to all registered attendees and uploaded to the [ATTA website](#).

#### *Presentations*

Presentations will be limited in duration to half an hour each, being the usual 20 to 25 minutes presentation followed by time for comments/questions.

#### *Registration*

Please email [Andrew Maples](#) to register your attendance. All details relating to online attendance will be made available at a later date.

## 04 | ATTA AGM AGENDA

Date & Time: Wednesday, 20 January 2:00pm - 4:00pm Sydney time

Via Zoom: <https://unsw.zoom.us/j/81183125555>

Present:

Apologies:

1. Minutes of the previous meeting published in the April ATTA News 2020:

[http://atta.network/s/2020\\_ATTA\\_News\\_April.pdf](http://atta.network/s/2020_ATTA_News_April.pdf)

2. Matters arising from the minutes

3. Reports:

President's report

Treasurer's report

Secretary's report

4. Confirmation of continuing Executive Committee membership to 2022 AGM given the disruption caused by the impact of COVID.

5. Confirmation of State/Territory/NZ representatives

6. Appointment of auditor

7. ATTA 2022 to be hosted at the University of Canterbury, Christchurch, NZ:

Wednesday 19 - Friday 21 January 2022

ATTA 2023 offer to be hosted at the University of South Australia

Dates to be determined

Expressions of interest for hosting ATTA 2024.

8. General business:

## 05 | ARRIVALS, DEPARTURES AND HONOURS

### Honours



*Frank O'Loughlin QC*

Frank O'Loughlin QC has been a practising barrister and member of the Victorian Bar since 2003, practising principally in taxation and commercial law and a part-time Deputy President of the Commonwealth Administrative Appeals Tribunal. Frank has been an extraordinary and steadfast contributor to the University of Melbourne Tax Masters and leads the teaching of the Corporate Tax A subject. Frank comments, "I enjoy teaching in the programs, meeting students and the company of my colleagues with whom I teach." Frank is a member of the University of Melbourne Tax Group Advisory Board.



*Sonali Walpola*

Congratulations to Sonali Walpola who has just been promoted to Senior Lecturer, at the ANU College of Business and Economics, effective 1 January 2021.



*Patrick Nolan*

Patrick Nolan has joined the New Zealand Treasury as the manager of the analytics and insights (A&I) team. He joins the Treasury from the New Zealand Productivity Commission, where he was the Director of the Commission's economics and research team and the inquiry into frontier firms.

The Treasury's A&I team has two key functions. One is to conduct primary research using Stats NZ's Integrated Data Infrastructure (IDI). The IDI links together a wide range of survey and administrative data on New Zealand individuals, households and businesses.

The A&I team also maintains, develops, and operates the TAWA (Tax and Welfare Analysis) model, which is the Treasury's microsimulation model of the New Zealand personal tax and welfare system. TAWA can model tax or welfare system changes and assess incomes, costs, poverty, inequality, and distributional impacts at the individual, family, and household levels.

## 06 | ATTA PEOPLE IN THE MEDIA

### *Cynthia Coleman*

- Katie Walsh, '[Time for another go at tax reform in Australia](#)', Acuity, 3 August 2020

### *Helen Hodgson*

- Anna Patty, 'Study deflates assumption of well-off singles', Sydney Morning Herald, 30 November 2020 p 5

## 07 | BULLETIN BOARD

### *JATTA Volume 15 Issue 1*

The 2020 edition of JATTA has been published and can be found on the [ATTA website](#).

### *Do you have a Bulletin Board item?*

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

### *ATTA News Publishing Deadlines*

Please note the following dates are approximate.

January Edition of ATTA News

- Items to the Editor by: 8 January 2021
- Publicly available on: 15 January 2021

February edition of ATTA News:

- Items to the Editor by: 8 February 2021
- Publicly available on: 19 February 2021

### *Ernst Mach Worldwide Grant 2021/22*

Dear Colleagues,

The Institute for Austrian and International Tax Law, WU would like to inform you about the Ernst Mach Worldwide grants which are awarded by the OeAD-GmbH/ICM on behalf of and financed by the Austrian Federal Ministry of Science, Research and Economy (BMWFV) for research periods within the Academic Year 2021/22.

The Ernst Mach Worldwide grants enable young graduates (Maximum age: 35 years – born on or after 1 October, 1985) from all countries (except Austria) to apply for a research period (one to nine months) in Austria, supported by a grant.

In order to be able to apply for the Ernst Mach grant a letter of consent from an Austrian supervisor is required. The Institute for Austrian and International Tax Law would be very happy to support the application of a limited number of promising candidates who are doing research in international tax law.

If you are interested in applying for the Ernst Mach grant, please submit your application to us by December 20, 2020 (the closing date for online applications to OeAD-GmbH is February 1, 2021).

Further details can be found on our website under this [LINK](#).

We are looking forward to receiving your applications by email to [caroline.ristic@wu.ac.at](mailto:caroline.ristic@wu.ac.at).

Kind regards,

Georg Kofler / Michael Lang / Alexander Rust / Josef Schuch / Karoline Spies / Claus Staringer / Pasquale Pistone / Alfred Storck / Jeffrey Owens / Maria Wimmer

## 08 | BOOK REVIEW

### **The Dynamics of Taxation: Essays in Honour of Judith Freedman**

Edited by Loutzenhiser and Rita de la Feria

[2020 | Hart Publishing](#)

I was delighted when my expression of interest to review this book was accepted as I have closely followed Professor Judith Freedman's contributions to tax law and practice over many years. I have also had the privilege of spending time with Judith on numerous occasions, not only in the United Kingdom (UK), but also in Australia and most recently in Hong Kong.

Professor Judith Freedman was the first female professor of tax law in the UK and has played a leading role in establishing the importance of tax law in teaching and research. This book comprises 16 chapters (or essays), together with a foreword (by John Avery Jones), introduction (by Philip Baker) and post-word (by Heather Self). This milestone collection of essays on tax law and policy celebrates Judith's legacy during an academic career spanning 40 years. The collection focuses on four areas or themes of taxation scholarship to which Judith made her most notable contributions, namely: taxation of small businesses and individuals; tax avoidance; corporate tax reform; and tax administration. For many in academia, Judith's leadership in tax research is reflected through her editorship of the *British Tax Review*, an outlet that has significantly shaped the approach and impact of tax research.

Contributors presented earlier versions of their chapters at a conference held at the Säid Business School at the University of Oxford in May 2019, the culmination of dedicated efforts over the preceding three years. The mix of the contributors' disciplines - lawyers, economists, academics and practitioners – is in part reflected in the approaches taken in the essays. The global impact of Judith's work is also evident through the geographical spread of the contributors – Australia, Canada, Germany, Ireland, Italy, Malta, Portugal, Ukraine and the UK.

The collection is easily able to be read in a number of separate sessions, whether by individual chapter or by theme. One cannot help but admire the breadth of expertise and dedication that Judith has shown over her long and distinguished career, which I should hasten to add is far from being over! Judith's mentoring of junior faculty, and contributions to Women in Tax (in the UK), are reflective of the inspiring role model she has been to numerous academics and practitioners.

My principal takeaway is that there is much more to Judith's contributions to tax law and practice than what many, including myself, have appreciated. One can only wonder what would be the state of taxation law, practice and research if Judith had not taken the move from practice to academia. In our current parlance, Judith's contributions demonstrate impact. I hope that this brief overview whets the appetite for you, the reader, to secure your own copy and explore the contributions in detail. I would hope that in doing so you come away with a greater appreciation of Judith's contributions and the high regard and respect which she is held in globally. The contributors and editors are to be congratulated for leaving us with this legacy. This collection comes in two principle formats: hard copy and eBook. I have no hesitation in recommending this collection should be part of your bookshelf, whether physical or virtual.

*Adrian Sawyer*

University of Canterbury, NZ

## 09 | CALL FOR SUBMISSIONS

### Centre for Tax Law Fifth Tax Policy Conference 5th Conference | 5-6 July 2021

**Ranking:** N/A

**Abstract Deadline:** Thursday, 31 December 2020

**Theme:** Tax law in times of disruption and recovery

The Centre for Tax Law at the University of Cambridge is calling for papers to be presented at its fifth Tax Policy Conference on Monday, 5 and Tuesday, 6 July 2021.

The topic of the conference is “Tax law in times of disruption and recovery”. Possible areas of interest include, but are not restricted to the following:

- The role of tax law in alleviating the immediate pressures of the Covid-19 pandemic and other natural and man-made disasters.
- The use of tax law mechanisms as part of wide recovery programmes in the UK and elsewhere.
- The evolution of ideas about the use of tax for regulatory and redistributive purposes over recent years.
- The responsiveness of tax coordination, cooperation and harmonisation programmes to recent political, public health and environmental disruptions.
- The relation of tax law to wider themes of social cohesion, separatism and trust in the context of an increasingly volatile world.
- The opportunities for tax professionals to influence wider events and debates.

Abstracts of up to 500 words should be sent to [ctl@law.cam.ac.uk](mailto:ctl@law.cam.ac.uk) by 31 December 2020.

Further information [here](#).

### Melbourne Law School Tax Research Seminars Online

Expression of Interest 2021

**Ranking:** N/A

**Manuscript Deadline:** N/A

**Seminar Date:** Throughout 2021

Based on the success of our Tax Research Seminars Online in 2020, we are continuing the monthly series in 2021. We are seeking expressions of interest to present your paper in the series in 2021.

The Seminars are held on the last Thursday of each month, between February to November (except June) at 3.30pm – 5.00pm (AEST). The seminars are run online as a Zoom meeting, with 25 to 30 minutes paper presentation followed by 10-15 minutes comments from a discussant selected by the Chair and then ample time for questions and discussion. We have space for the months April to November at this stage. A full written paper is required to be circulated before the seminar and is published in the series on the Event webpage hosted by the Tax Group.

The Tax Research Seminars Online series hosted by the Tax Group at Melbourne Law School aims to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the Asia Pacific region, as well as further afield.

The list of past and upcoming seminars, and papers, in 2020 can be viewed [here](#).

If you are wishing to present a Seminar in the series, please email your draft or working paper, if available, or your proposed title and abstract for consideration, and please identify your preferred timeslot, if any. At the time of the seminar, papers should be substantial drafts, or prepared for working paper, journal submission, under review or accepted for publication.

Submission & enquiries: Please email to [law-tax@unimelb.edu.au](mailto:law-tax@unimelb.edu.au)

**Call for National Reporters - Mandatory Disclosure Rules Conference**

[1-3 July 2021](#)

**Location:** Rust (Burgenland)

**CV Deadline:** Monday, 28 December 2020

**National Report Submission Deadline:** Saturday, 15 May 2021

Dear Colleagues,

The Institute for Austrian and International Tax Law, WU in cooperation with the Doctoral Program in International Business Taxation is organizing the conference: "Mandatory Disclosure Rules"

The conference will be held from 1-3 July 2021 in the city of Rust (Burgenland). We do hope that in July 2021 the conference can be held on-site in Rust again. If not, the research project will continue in any case, and the book will be published, nevertheless.

Please find detailed information about the conference and the questionnaire on our website under the following [link](#).

If you are interested in taking an active role in this conference and in preparing the National Report for your country, we would kindly ask you to apply by email to [layomi.gunatilleke-jester@wu.ac.at](mailto:layomi.gunatilleke-jester@wu.ac.at) and [hedwig.pfanner@wu.ac.at](mailto:hedwig.pfanner@wu.ac.at).

The completed application form, your CV and publication list (or link to your academic website) and a few words on your special affinity to the topic (e.g. having published extensively, having worked in this area, being part of a related group or organisation) should be submitted by Monday, 28 December 2020, at the latest.

The conference board will select the National Reporters, and all applicants will be informed whether they have been selected or not, by email.

The deadline for submission of the National Report will be Saturday, 15 May 2021.

Also this year the conference will be preceded by a doctoral seminar about the topic in the afternoon, which will be held on Thursday, 1 July 2021 and a welcome dinner. The working sessions will be held all day on 2-3 July 2021 and the conference will end on Saturday, 4 July 2020 after dinner.

We hope you will find the topic interesting and look forward to many interesting applications!

Kind regards,

Georg Kofler / Michael Lang / Alexander Rust / Josef Schuch / Karoline Spies / Claus Staringer / Pasquale Pistone / Alfred Storck / Jeffrey Owens

**Austaxpolicy.com Blog (Tax and Transfer Policy Institute)**

[TTPI Working Papers and Policy Briefs](#)

**Manuscripts Submission Deadline:** Continually

**Publication Date:** Continually

[tax.policy@anu.edu.au](mailto:tax.policy@anu.edu.au)

## 10 | TAX LAW DEVELOPMENTS

### Australia

#### Federal Court of Australia

[Advanced Holdings Pty Limited as trustee for The Demian Trust v Commissioner of Taxation \(No 2\) \[2020\] FCA 1663](#)

Davies J – 18 November 2020

Catchwords:

- Costs – apportionment of costs

The court orders that:

1. The respondent pay the applicant's costs of the proceeding, such costs to be taxed in default of agreement.





[ACN 154 520 199 Pty Ltd \(in liquidation\) v Commissioner of Taxation \[2020\] FCAFC 190](#)

Perram, Moshinsky and Thawley JJ – 6 November 2020

Catchwords:

- Taxation – goods and services tax – precious metal – creditable acquisitions – creditable purpose – whether the taxpayer's supply of gold to dealers was GST-free or input taxed – where the taxpayer acquired gold that was already of 99.99% fineness, but not in investment form, and therefore not "precious metal" as defined – where the taxpayer processed and sold the gold to dealers in "precious metal" form – whether the taxpayer's supply of gold to dealers was the "first supply of that precious metal after its refining by ... the supplier" and therefore GST-free – construction of "refining" – construction of the "first supply" requirement for a GST-free supply of precious metal
- Administrative law – procedural fairness – where the Tribunal made adverse knowledge findings on the basis of two emails and the transcript of a compulsory examination that had not been the subject of any cross-examination or any submissions by the parties – whether the Tribunal denied the taxpayer procedural fairness – whether any denial of procedural fairness was material
- Taxation – goods and services tax – anti-avoidance provisions – where the Tribunal found (in the alternative to its conclusion regarding construction) that the anti-avoidance provisions applied – whether the Tribunal erred in its approach to the anti-avoidance provisions, in particular the issues of dominant purpose and principal effect

The court orders that:

1. The appeal be allowed.
2. The decision of the Administrative Appeals Tribunal made on 20 December 2019 be set aside.
3. The matter be remitted to the Administrative Appeals Tribunal (differently constituted) for determination according to law.
4. Subject to paragraph 5, the respondent pay the applicant's costs of the proceeding, as agreed or assessed.
5. If either party wishes to seek a different costs order, the party may within 14 days file and serve an outline of submissions (of no more than three pages) on costs. In that event, the other party may within a further 7 days file and serve a responding submission (of no more than three pages).
6. Subject to further order, the reasons for judgment of the Full Court not be published other than to the parties, and be kept confidential to the parties, for a period of 10 days.
7. Within seven days, the parties inform the Court whether they consider that any part or parts (and, if so, which part or parts) of the reasons for judgment of the Full Court needs or need to be the subject of non-publication and confidentiality orders.
8. There be liberty to apply.

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[Commissioner of Taxation v Douglas \[2020\] FCAFC 220](#)

Griffiths, Davies and Thawley JJ – 4 December 2020

Catchwords:

- Taxation - "appeals" under s 44 of *Administrative Appeals Tribunal Act 1975* (Cth) - whether invalidity benefits received pursuant to *Military Superannuation and Benefits Act 1991* (Cth) and *Defence Force Retirement and Death Benefits Act 1973* (Cth) were "superannuation lump sums" or "superannuation income stream benefits" within the meaning of the *Income Tax Assessment Act 1997* (Cth) – where "superannuation income stream benefit" defined as a "superannuation benefit specified in the regulations" – whether regulations provided necessary specification – held regulations provided specification of superannuation income stream benefit – whether invalidity benefits were paid from a "superannuation income stream", as defined in the *Income Tax Assessment Regulations 1997* (Cth) – whether payments were made at least annually – whether size of payments of benefit in a year was fixed – whether income stream in the Burns proceeding commenced before 20 September 2007 – whether arrears payment in the Douglas proceeding was from an income stream that commenced before 20 September 2007 – held invalidity payments in Walker and Douglas proceedings were not paid from a superannuation income stream – held invalidity payments in Burns proceeding was paid from a superannuation income stream – appeals dismissed in Walker and Douglas proceedings – appeal allowed in Burns proceeding

The court orders that:

1. The notice of appeal be dismissed.
2. There be no order as to costs.

*Deputy Commissioner of Taxation v Wang* [2020] FCA 1711

Abraham J – 27 November 2020

Catchwords

- Practice and procedure – ex parte application for freezing orders – whether applicant has good arguable case – whether real danger that a prospective judgment might not be satisfied – whether balance of convenience favours the making of a freezing order

*Colin Fong*

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## New Zealand

In its manifesto for the 2020 election, the Labour party undertook to raise the highest marginal income tax rate from 33% (on the slice of income above NZD 70,000) to 39% on the amount of taxable income in excess of NZD 180,000. Grant Robertson, the Minister of Finance claimed this move would affect only 2% of taxpayers but would raise an additional NZD 550 million a year. He brushed off the possibility of non-salaried higher earners rearranging their affairs to avoid the new highest rate, despite ample evidence from Australia of bunching of incomes below the top rate.

Having achieved a majority in Parliament – an unprecedented victory under the mixed member proportional representation voting system – the new Labour government has introduced the Taxation (Income Tax Rate and Other Amendments) Bill (NZ) to make good on its promise. The Bill also increases the minimum family tax credit (a tax credit aimed at providing financial support to low-income working families) from NZD 27,768pa to NZD 29,432pa to account for the \$25 per week increase in main benefits made in 2020.

The increase in the highest marginal income tax rate has knock-on effects for, among other tax provisions: fringe benefit tax; resident withholding tax on interest; employer’s superannuation contribution tax; and retirement scheme contribution tax.

*Jonathan Barrett*

## 11 | TAX AND RELATED MEETINGS

### Domestic

Various domestic events happening in the foreseeable future are listed below.

#### ATTA 2021 Conference

Please see more information contained at items 2 and 3 above.

[The Tax Institute](#)  
[Law Council of Australia](#)  
[Australian Conference Alerts](#)

#### Melbourne Law School Tax Research Seminars Online

The tax research seminar online series hosted by the Melbourne Law School, aimed to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the region. The seminars are run online as a Zoom meeting, with 25 to 30 minutes paper presentation followed by comments from a discussant and then ample time for questions and discussion.

If you are interested in attending these events please email [law-tax@unimelb.edu.au](mailto:law-tax@unimelb.edu.au).

#### 14th International Conference on Tax Administration

**Date:** 23-24 November 2021

**Location:** Hilton, Sydney

**Cost:** TBA

**Theme:** Tax Administration at the Frontier

For the first time this prestigious biennial event that brings together leading tax administrators, academics and practitioners from around the globe will be a combination of face to face and virtual participation. In keeping with these challenging times we have chosen these dates to maximise the option of you being able to join us in person but with the flexibility to join us virtually if you can't.

During this two-day event, conference speakers will present on the latest developments and innovations including the central role of tax administrations in governments' responses to the pandemic: cutting-edge initiatives in service delivery and compliance including digital and data use, tap and go, and artificial intelligence; data policy, ethical data exploitation, cyber security and new developments in regulating data platforms; globalisation of revenue administration; tax dispute resolution and new approaches to protecting the vulnerable including the elderly, impaired and those in remote areas; and managing the latest frontier adapting tax administration to support Governments' responses to the pandemic and their transition strategies to a 'new normal' as they wrestle with the economic and social fallout.

We will be back in touch in March 2021 when we will open registrations for face to face and online attendance. If you are unable to make the 2021 dates, we can arrange a full reimbursement and will reimburse the difference for any attendees who would now like to transfer their registration to the online option. Online tickets will be available for sale from March 2021.

Presenters who previously had papers accepted please note we will be in touch to advise you of the new deadline for papers in case you want to refresh yours to take account of recent extraordinary developments!

Please hold the dates so you can join us to hear from leading academics, policy makers and practitioners about current and future global trends

Conference organisers have secured with the Hilton a special delegate rate of 10% off the advertised day rate. To book, please visit here or call on +61 (0)2 9266 2000 referring to group code GUNSWD for a discounted rate (10% off from hotel best available rate).

Contact: [Maree Magafas](#), UNSW Business School

## International

Various international events happening in the foreseeable future are listed below.

<a href="#">5th International Taxpayer Rights Conference</a> <b>Date:</b> Postponed to 6-7 October 2021 <b>Location:</b> Pretoria, South Africa <b>Cost:</b> USD\$325 <b>Theme:</b> Taxpayer Rights, Human Rights: Issues for Developing Countries	<a href="#">Canadian Tax Foundation</a>	<a href="#">Institute for Fiscal Studies</a>
	<a href="#">Institute for Austrian and International Tax Law</a>	<a href="#">International Bureau of Fiscal Documentation</a>
	<a href="#">International Fiscal Association</a>	<a href="#">International Tax Planning Association</a>
<a href="#">International Fiscal Association Congress</a> <b>Date:</b> Postponed to 10-15 September 2022 <b>Location:</b> Cancun, Mexico <b>Cost:</b> Unknown <b>Theme:</b> TBA	<a href="#">International Events and Law Conferences</a>	<a href="#">Practising Law Institute</a>
	<a href="#">New York Bar Association</a>	<a href="#">Hieros Gamos Worldwide Law Events</a>
	<a href="#">International Bar Association</a>	<a href="#">American Bar Association</a>

## 12 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages. Italics indicate ATTA members.

### Domestic

#### The Conversation

ATTA Member Contribution(s)

- *Helen Hodgson* – '[What matters is the home: review finds most retirees well off, some very badly off](#)', 23 November 2020

Articles of Interest

- John Quiggin – '[Victoria's electric vehicle tax and the theory of the second-best](#)', 9 December 2020
- John Freebairn – '[Axing stamp duty is a great idea, but NSW is going about it the wrong way](#)', 24 November 2020

#### Tax and Transfer Policy Institute

##### [Working Papers](#)

Papers of Interest

- Paul Tilley – 'Post-war tax reviews and the Asprey Blueprint', Working Paper No 15/20
- Jannet F Jacob – 'Child responsive budgeting as a public finance management tool: A case of Karnataka, India', Working Paper No 14/20

#### Tax and Transfer Policy Institute

Downloadable Tax Facts

- Tax Fact #15: '[What is International Tax?](#)'
- Tax Fact #16: '[What is Land Tax?](#)'

#### Australian Tax Forum

##### [2020 | Volume 35 | Issue 4](#)

ATTA Member Contribution(s)

- *Christina Allen* – 'From uncertainty to objectivity: reforming tax deductions for repair costs in Australia'
- *Lisa Marriott and Rob Whit* – 'Water taxes: a systematic literature review with application to Australia and New Zealand'
- *Rodney Brown* – 'The impact of increased tax transparency via public country-by-country reporting on corporate tax aggressiveness: evidence from the European Union'
- *Mark Bowler-Smith* – 'A new-knowledge approach to corporate income tax efficiency'

Articles of Interest

- Thomas Hoppe – 'Tax complexity in Australia – a survey-based comparison to the OECD average'
- Oliver Tillmann – 'Spoiling Oktoberfest – expat's hosts in the wage-tax-crosshair'
- Roman Lanis, Peter Wells, Brett Govendir and Ross McClure – 'Does the Australian Taxation Office disclosure of information impact the costs of tax aggressiveness: evidence from the Tax Laws Amendment (2013 Measures No.2) Act 2013 over the period 2015-2018'

**Tax and Transfer Policy Institute (TTPI)**

[Austaxpolicy.com](http://Austaxpolicy.com) Blog

ATTA Member Contribution(s)

- *Diane Kraal* – ‘Biofuels, Ethanol and Tax Incentives’, 3 December 2020
- *Evgeny Guglyuvatyy* – ‘Regulating a New Phenomenon: Examining the Legal Nature and Taxation of Cryptocurrencies in Australia and Singapore’, 7 December 2020
- *Rodney Brown* – ‘Voluntary Tax Disclosures and Corporate Tax Avoidance: Evidence from Australia’, 10 December 2020

Articles of Interest

- Robert Breunig – ‘NSW’s Brave Stamp Duty Switch Should Be Even Bolder’, 27 November 2020
- Dharana Nepal – ‘India’s Growth and Inequality Paradox’, 25 November 2020
- Rita de la Feria and Agustin Redonda – ‘COVID-19 and Inequality: The Urgent Need for Tax Expenditure Reform’, 24 November 2020
- Andrew Wright – ‘The Effect of Penalties on Job Seekers’, 1 December 2020

**Taxation Today**

2020 | December | Issue 145

ATTA Member Contributions

- *John Bevacqua* – ‘Taxpayer Attitudinal responses to Tax Audits: Strategic Implications of Recent Findings from the United States’ [Part 2]

Articles of Interest

- Ian Fay and Alex Chang – ‘Have You Been Investing in Cryptocurrency? Be Prepared as Inland Revenue is Coming for You!’

**Taxation Today**

2020 | November | Issue 144

ATTA Member Contributions

- *John Bevacqua* – ‘Taxpayer Attitudinal responses to Tax Audits: Strategic Implications of Recent Findings from the United States’ [Part 1]

Articles of Interest

- Jeroen Scholten – ‘How Global Trade Volatility is Affecting Supply Chains and Operating Models’

**eJournal of Tax Research**

2020 | Volume 18 | Issue 2

eJTR editorial team is very pleased to announce that a Special Issue of the *eJournal of Tax Research* to mark the 20th Anniversary of Goods and Services Tax in Australia has now been published.

ATTA Member Contribution(s)

- *Michael D’Ascenzo AO* – ‘Making the value added tax happen’
- *Fiona Martin* – ‘The case for specific exemptions from the goods and services tax: what should we do about food, health and housing?’
- *Dr Peter Hill* – ‘GST administration – commentary’
- *Michael Walpole* – ‘The Australian GST cross-border rules in a global context’

Articles of Interest

- Greg Smith – ‘GST as a secure source of revenue for the States and Territories’
- Michael B Evans – ‘GST: where to next?’
- Kevin O’Rourke – ‘GST administration – a practitioner’s perspective’
- Amrit MacIntyre – ‘Financial supplies after 20 years’
- Denis McCarthy – ‘Twenty years later: Australia’s GST design, digitisation and disruption – old and new challenges’
- Gordon Brysland – ‘Fiscal neutrality: Foreign ghost in our GST machine?’
- Walter Hellerstein – ‘The rapidly evolving universe of US state taxation of cross-border online sales after South Dakota v Wayfair, Inc., and its implications for Australian businesses’



ATO TV: ‘J5 -Tackling tax crime together’, 10 July 2020

**Taxation Today**

2020 | October | Issue 143

ATTA Member Contributions

- *Adrian Sawyer* – ‘Individual Income Tax Reform in Chana: An Evaluation through a New Zealand Lens’ [Part 2]

Articles of Interest

- Jane Tu – ‘Small Business Assistance Measures Explained’

### Taxation Today

2020 | September | Issue 142

ATTA Member Contributions

- *Adrian Sawyer* – ‘Individual Income Tax Reform in Chana: An Evaluation through a New Zealand Lens’ [Part 1]

Articles of Interest

- Paul Radcliffe and Anzhela Popova – ‘Managing Operational Tax Risks in a Time of Change’

### Taxation Today

2020 | August | Issue 141

Articles of Interest

- Iain Bradley and Belinda Spreeuwenberg – ‘Optional Changes are on the Way for the Income Tax Treatment of Leases Subject to NZ IFRS 16’
- Lynne Taylor – ‘COVID-19 Response in New Zealand’

### Taxation Today

2020 | July | Issue 140

ATTA Member Contributions

- Andrew Hirst, Toby Eggleston, *Richard Vann* and Mary Hu – ‘BEPS 2.0 and COVID-19 – What’s Been Happening and Where to Now?’

Articles of Interest

- David Sutton – ‘Why New Zealand is Alone in the OECD in Resisting the Introduction of a Capital Gains Tax: Examining the Recent Debate’ [Part 2]’

### Taxation Today

2020 | June | Issue 139

Articles of Interest

- Pam Davidson – ‘What is a “Gift” for the Purposes of Section LD 1? Two Recent Appeal Decisions Provide Some Illumination’
- David Sutton – ‘Why New Zealand is Alone in the OECD in Resisting the Introduction of a Capital Gains Tax: Examining the Recent Debate’ [Part 1]

### Taxation Today

2020 | May | Issue 138

ATTA Member Contributions

- *Victoria Plekhanova* – ‘Surviving the Digital Tax Storm: Options for New Zealand’ [Part 2]

Articles of Interest

- Policy and Strategy, Inland Revenue Department – ‘COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020: A Special Report (excerpts)’

### Taxation Today

2020 | April | Issue 137

ATTA Member Contributions

- *Victoria Plekhanova* – ‘Surviving the Digital Tax Storm: Options for New Zealand’ [Part 1]

Articles of Interest

- Thomson Reuters New Zealand Tax Editors – ‘COVID-19 Economic Response Package’

### International

Please note some of the overseas publications listed may not yet be available locally. Links have been provided where possible.

#### British Tax Review

2020 | Issue 5

#### Current Note

- Timothy Lyons – ‘Tax and the UK/Japan Comprehensive Economic Partnership Agreement’

#### Case Notes

- Timothy Lyons – ‘Ireland and Apple v European Commission: the competent exercise of competences’
- John Snape – ‘Farnborough Airport Properties Co v HMRC: statutory interpretation and the “interstices” of administrative law’
- Alexander Kanishchev – ‘Société Générale S.A. v Agenzia delle Entrate – Direzione Regionale Lombardia Ufficio Contenzioso: the Italian financial transaction tax tested against standard principles’

#### Articles

ATTA Member Contributions

- Rita de la Feria and *Michael Walpole* – ‘The Impact of Public Perceptions on General Consumption Taxes’

Other Articles of Interest

- Mark Brabazon – ‘Holding Proteus: Emerging Treaty Practice on Hybrid and Fiscally Transparent Entities’

#### Book Reviews

- Dominic de Cogan – ‘Tax Authority Advice and the Public (Hart Publishing, 2020), by S. Daly’
- John Avery Jones – ‘Double Taxation and the League of Nations (CUP, 2018), by S Jogarajan’



## 13 | QUOTABLE QUOTES

“The nation's top tax reform architect, Ken Henry, says the deteriorating tax system will fail to support the economic recovery from the coronavirus crisis, as he called for a new tax on business cash flow to replace the GST, payroll tax and insurance duties imposed by the states.

Dr Henry's proposed new business cash flow tax would be a simpler way to indirectly tax consumption – a goal of tax economists – and avoid the divisive politics of the goods and services tax. It would slash the tax compliance burden for small business.

Backing a plea from Reserve Bank of Australia governor Philip Lowe for a tax shake-up so the economy can rebound from the biggest downturn since the Great Depression, Dr Henry also urged federal and state governments to replace damaging property stamp duties and fuel excise with land tax and road user charges.”

Source: John Kehoe and Patrick Durkin, '[Ken Henry says tax system won't support recovery](#)', Australian Financial Review, 23 April 2020

“Former Liberal Party leader John Hewson has said it before, but it's a point worth repeating. He should have told A Current Affair interviewer Mike Willesee to “piss off” in 1993.

Instead, Hewson's answer to Willesee's question about the tax on a birthday cake has become a tired anecdote on the dangers of honesty and ambition in policy platforms.

“The idea was to broaden the base as recommended by Asprey,” Hewson tells Acuity of his party's ambitious 1993 election policy to bring in a consumption tax.

“The answer was accurate, but I should have either told him to piss off or said it's an incredibly complicated system we're replacing with a simple one.”

Reflecting on the GST that eventually did happen under Prime Minister John Howard, Hewson says the involvement of the states and procurement of support from stakeholders via compromises was clever but ultimately neutered the tax.

“We've made the GST almost as complicated,” he says.

Court cases crunch questions such as whether a crisp dry bread is a biscuit and therefore subject to GST. We now spend so much on the exempt categories of fresh food, health and education that the tax only covers half of consumption, down from two-thirds at its inception.

That's hardly the simple, broad-based growth tax envisaged by Asprey.

Hewson sees the lighter and the darker side of it all.”

Source: Katie Walsh, '[Time for another go at tax reform in Australia](#)', Acuity, 3 August 2020

“The Sydney Law School was established by a benefaction of John Henry Challis. Some felt much of the bequest might be lost to death duties. The then Chancellor, Sir William Manning argued to avoid duties in both New South Wales and the United Kingdom. So the Sydney Law School began fittingly by a clever tax dodge”.

A more accurate depiction of the above, can be found at

Source: Craig Reucassell, '[A short history of the Sydney Law School](#)', 2005

## 14 | APPENDIX: AUSTRALIAN AND NEW ZEALAND TAX AND RELATED DOCTORAL THESES

Since the ATTA News for December 2002, I have published an annual list, which contained details of Australian and New Zealand tax and related PhDs and SJDs completed and in progress. During the past year, a number of doctoral theses were completed. Please notify me of any, which have commenced or have been completed and or have been accepted for publication. See the earlier issues for information required ie Author, Title of thesis, Institution, Supervisor/s, expected date of completion (optional). For completed ones, if published, please supply the title, place of publication, publisher, date of publication. If available electronically, please supply the URL or where it can be found. If you wish to preview the list before publication, please let me know by email.

I acknowledge many people who have supplied information for this list. Please let me know of any errors or omissions.

The list of Australian and New Zealand Tax and Related Theses can be found on the [ATTA G Drive here](#).

*Colin Fong*