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The Australasian Tax Teachers Association ('ATTA') is a non-profit organisation established in 1987 with the goal of improving the standard of tax teaching in educational institutions across Australasia. Our members include tax academics, writers, and administrators from Australia and New Zealand. For more information about ATTA refer to our website at https://www.atta.network/.

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FOREWORD

JOHN MCLAREN AND JOHN MINAS

The year 2020 started well with the 32nd Annual Conference of the Australasian Tax Teachers Association ('ATTA') held in Hobart, Tasmania between 22–24 January 2020 and hosted by the Tasmanian School of Business and Economics, located at the University of Tasmania.

The theme of the 2020 ATTA conference was 'Small Business and Innovation: Does the Taxation Law Support or Hinder Growth?' The theme was chosen on the basis that the Tasmanian economy is made up of small and medium businesses focused on agriculture, tourism and aquaculture. ATTA was incredibly fortunate to have taxation academics and tax professionals from Indonesia, Malaysia, South Africa, Italy, the United States ('US') and our strong contingent from New Zealand and Australia in attendance. This would not have been the case if the conference had been held later in the year. By March 2020, we were facing one of the most challenging times for tax teachers throughout Australasia with the Coronavirus pandemic. University academics had to adapt to online teaching and modify their lectures, tutorials, and assessments in order to meet the needs of their students for online teaching and learning. It is a credit to our members that throughout the rest of the year they were able to produce eleven papers for this edition of the *Journal of the Australasian Tax Teachers Association* ('JATTA') and our members were also able to conduct reviews of the papers that are included within this edition. We thank both the authors of the papers and the reviewers for their loyalty and support of JATTA.

Early in the year, ATTA experienced the passing of John Passant, one of our members who had a long and distinguished career in taxation, both as a senior member of the Australian Taxation Office and as an academic. John was a great friend to many of us in the tax teaching community and he is greatly missed.

The organising committee for this year's conference were delighted to have the Inspector-General of Taxation, Karen Payne, as one of our keynote speakers at the conference, even though Karen was not able to be with us in person. We also thank Professor Henry Lischer from the US for speaking to conference attendees, as well as Dr Keith Kendall from the Administrative Appeals Tribunal who talked about the Tax and Commercial dispute area. A special thank you is given to our Patron, Tony Pagone QC for his Patron's Address and continuing support for ATTA.

We also wish to thank the sponsors of our conference, Thomson Reuters, Oxford University Press, Wiley and UniSuper for their ongoing support for ATTA, and to acknowledge that their ongoing financial support is vital for the success of our annual conference.

This edition of the journal consists of eleven papers placed into three categories. The first category is under the heading 'Keynote Speech' and is comprised of the speech delivered by Dr Keith Kendall on 'Tax Litigation in the Administrative Appeals Tribunal'. We note that Keith is now the Chair of the Australian Accounting Standards Board.

The second category of papers falls under the heading 'Technical'. The papers in this section include: 'If Philosophers Can't Tell Us What Art Is, Can Officials?' by Jonathan Barrett; 'Trending Towards Convergence' by John Tretola; 'The "Ebb and Flow" of Fiscal Support for Research and Development: A New Zealand Development' by Adrian Sawyer; 'Equity in Access to Employer-Assisted Housing in Papua New Guinea: Empirical Analysis and Policy Implications' by Mehmet Özmen, Ken Devos and Francis Odhuno; 'An Investigation of the Attitudes of Business Taxpayers Towards the Malaysian Goods and Services Tax and its Potential Managerial Benefits' by Nthati Rametse, Tshepiso Makara and Appadu Santhariah; and 'Equity Crowdfunding in New Zealand: The Role of Income Tax Incentives' by Victoria Plekhanova and Jonathan Barrett.

The third category of papers has been grouped under the heading 'Education'. The papers in this category comprise: 'Building Students Self-Efficacy Through the "Tax Firm" Case Studies: The Effect of Prior Professional Work Experience' by Brett Freudenberg and Anna Mortimore; 'Exploring the Effectiveness of Using an Extended Case Study in the Teaching of Taxation' by Andrew Maples, Alistair Hodson and Melinda Jones; 'Analysis of Tax Education and Tax Knowledge: Survey on Students in Indonesia' by Bernardus Bayu Ryanto Prakoso Putro and Christine Tjen; and 'Citation Tools for Taxation and Other Publications' by Colin Fong.

We are confident that our members will enjoy reading the many papers in this edition of the journal and we hope that all members of ATTA have a more 'Covid-19 normal' year in 2021.

John McLaren and John Minas
Tasmanian School of Business and Economics, University of Tasmania
7 December 2020

KEYNOTE SPEECH

TAX LITIGATION IN THE ADMINISTRATIVE APPEALS TRIBUNAL

KEITH KENDALL*

I INTRODUCTION

In Australia at least, tax litigation is often a genuinely unique creature that is quite distinct from other forms of civil and administrative litigation. Naturally, there are similarities that exist between these different forms of litigation, however, given the myriad of fundamental differences, taxation litigation merits its own study.

This paper outlines the procedures by which litigation matters commence (in Australia) and are otherwise conducted. While the paper primarily focuses on those procedures that occur at first instance, some brief comments concerning the appellate process are also provided. The paper concludes with additional commentary on the relatively new Small Business Taxation Division in the Administrative Appeals Tribunal ('AAT'). It should be noted that all comments in this paper relate to the process as it is conducted in Australia.

Whilst much of the following material is descriptive, the main purpose of this paper is to highlight key points of interest that often present as areas of dispute and, consequently, would benefit from further academic consideration as a means to guide and inform relevant decision-makers.[1]

II TAX LITIGATION IN AUSTRALIA

The primary means by which tax litigation is governed is contained in Part IVC of the *Taxation Administration Act 1953* (Cth) ('*TAA 1953*'), which applies to taxation generally and not income taxation in isolation. It should be noted that in this section, unless otherwise noted, all legislative references are to the *TAA 1953*.

As will be expanded upon, the operation of Part IVC of the *TAA 1953* ('Part IVC') hinges on the presence of an assessment. In the absence of an assessment, the taxpayer has an avenue to challenge the Commissioner of Taxation (the 'Commissioner') via section 39B

* Dr Keith Kendall was a Member of the Administrative Appeals Tribunal and is currently Chairman of the Australian Accounting Standards Board. This paper was presented to the Australasian Tax Teachers Association Conference hosted by the University of Tasmania in January 2020.

1 See G Pagone, 'Brambles, Hedgehogs and Foxes' [2018] *Federal Judicial Scholarship* 1, which discusses the significant value that tax academics offer to the judiciary through independent conceptual analysis which can be applied to judicial decision-making roles.

of the *Judiciary Act 1903* (Cth) although, further discussion on this point is beyond the scope of this paper.[2]

Accordingly, discussion in this Part will proceed to detail the process for initiating taxation objections prior to commenting on the position that arises once a taxation objection has been made and decided upon by the Commissioner.

A *Taxation Objections*

Under Part IVC, the litigation process commences when a taxpayer lodges an objection against a taxation decision. A 'taxation decision' is defined in s 14ZQ to mean an 'assessment, determination, notice or decision against which a taxation objection may be, or has been, made'.[3] For its part, 'taxation objection' is defined in s 14ZL and refers to an objection that is permitted by another provision. For example, s 175A of the *Income Tax Assessment Act 1936* (Cth) ('*ITAA 1936*') permits a taxpayer to object against an assessment made in relation to them under Part IVC.[4] This will often arise after the Commissioner has conducted an audit and concluded that the taxpayer has made an error in their original return, necessitating an amendment to the original assessment.[5] It should

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2 For consideration of the interaction of challenges under section 39B of the *Judiciary Act 1903* (Cth) with Part IVC applications see *Commissioner of Taxation v Futuris Corporation Ltd* (2008) 237 CLR 136.

3 Examples of taxation decisions that are not reviewable have been previously explored: see Martin Booth and Heydon Miller, 'Managing Tax Disputes' (Conference Paper, Review to Dispute with the ATO, The Tax Institute, 22 August 2013) 15–16.

4 Examples of other reviewable decisions are provided in Robyn Thomas and John Balazs, 'Running a Matter in the Administrative Appeals Tribunal' (Conference Paper, NSW 7th Annual Tax Forum, The Tax Institute, 22 May 2014) 5–6.

5 Under Australia's self-assessment regime, taxpayers prepare and lodge returns as the first step in the assessment process. These returns are normally accepted at face value by the Commissioner and an assessment is raised based on that information. This is then subject to the Commissioner having the power to amend that assessment within a timeframe that is determined by the taxpayer's circumstances: see *Income Tax Assessment Act 1936* s 170 ('*ITAA 1936*'). In most circumstances where the taxpayer does not have simple affairs, this time limit is normally four years from the date that the assessment is provided to the taxpayer. A notable exception to this time limit is where the Commissioner forms the view that the taxpayer had engaged in fraud or evasion, in which case there is no limit as to when the Commissioner may amend the assessment: see *ITAA 1936* s 170(1) item 5. This process gives rise to a number of potential research points which are identified later in this paper. For an overview of the provisions regarding time limits see generally Booth and Miller (n 3). For comments on taxpayer behaviour that constitutes fraud or evasion see, eg, Australian Taxation Office ('ATO'), *Fraud or Evasion* (PSLA 2008/6, 20 March 2008); David Marks and Fletcher Heinemann, 'Effectively Managing Tax Disputes – What is Your Strategy?' (Conference Paper, Queensland Tax Forum, The Tax Institute, 24–25 August 2017); Murray Shume, 'Forming an Opinion of "Fraud or Evasion" – Is this the Commissioner's Unchallengeable Right to an Unlimited Amendment Period?' [2017] (April) *Australian Tax Law Bulletin* 3; Mathew Leighton-Daly, 'Are You Facing an Unlimited Amendment Period Due to Fraud or Evasion?' (2015) 19(2) *The Tax Specialist* 66; Daniel Slater and Stephen Chen, 'Finding Fraud or Evasion in the Corporate Tax Environment' (2015) 49(10) *Taxation in Australia* 603; Mark Robertson and Peter Godber, 'Fraud or Evasion?' (Conference Paper, National Tax Convention, The Tax Institute, 18–20 March 2015).

be noted that an amended assessment is also treated as an assessment for these purposes.[6]

To perhaps complicate matters further, it is possible to object against an assessment that is entirely based upon the taxpayer's own submissions (that is, where the taxpayer has lodged a return and there has been no audit or amendment by the Commissioner). This demonstrates the concept that an assessment is a taxation decision against which an objection may be raised under the process described above. This may occur where the taxpayer has taken a conservative approach in applying the taxation law in preparing their return due to an ambiguity in the law. While the taxpayer may be of the genuine opinion that the more taxpayer-favourable approach is correct, the return may be prepared on the basis of the more revenue-favourable interpretation with the assessment subsequently raised on that basis and it is that assessment to which the taxpayer raises the objection. Note in this case, no audit has been undertaken and there is no dispute generated through the audit process arising from an amended assessment. One of the practical advantages of taking this approach, rather than an alternative method (such as lodging on the genuine taxpayer-favourable view and waiting for an audit, or seeking a private binding ruling under Division 359 of Schedule 1) is that it mitigates the taxpayer's exposure to penalties if the Commissioner takes an alternative view to that held by the taxpayer.

For the purposes of this paper, the discussion will be limited to objections against income tax assessments, although, as has been indicated, objections may be raised on other matters.[7]

The objection process is governed by Division 3 of Part IVC. Under s 14ZW, the taxpayer may generally object to the taxation decision at any time during the amendment period outlined in *ITAA 1936* s 170. If, however, that time has elapsed, the taxpayer generally has 60 days to lodge the objection after they have been served with notice of the taxation decision.[8] There is scope for an objection to be lodged out of time, however, this is at the Commissioner's discretion.[9]

Turning to the objection itself, the content of the objection is governed by s 14ZU. This provision is deceptively critical in that a number of factors arising in the litigation process are affected by the manner in which the objection is framed. In particular, s 14ZU(c) requires that the taxpayer must state 'fully and in detail' the grounds upon which the

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6 *ITAA 1936* (n 5) s 173.

7 For example, private rulings: see *Income Tax Assessment Act 1997* (Cth) ('*ITAA 1997*') s 359-60(1). Objections may also be made where the Commissioner has failed to take certain actions, such as not making an objection decision: at s 155-30; or failing to make a private ruling: at s 359-50. See also Thomas and Balazs (n 4).

8 *Tax Administration Act 1953* s 14ZW(1)(c) ('*TAA 1953*').

9 Ibid s 14ZX. The Commissioner's approach to exercising this discretion — including expectations concerning the information that the taxpayer is to include with their request — has previously been outlined by the ATO: see ATO, *How to Treat a Request to Lodge a Late Objection* (PSLA 2003/7, 30 July 2003).

objection relies.[10] This is an important and frequently overlooked requirement in practice as subsequent review and appeals rights are limited (in the absence of leave) to the grounds stated in the objection.[11]

It should also be noted that, while there is no formal burden of proof in the ruling process, the taxpayer, in effect, does bear the burden of convincing the Commissioner of their position (this observation can be extended to the process during audit for the same reasons). This arises from the nature of the ruling process and is ultimately a practical observation — the taxpayer is making submissions to the Commissioner and attempting to advocate a particular position in order to convince the Commissioner of the correctness of their position. Relevantly, this is the same as private negotiations in other civil matters, most clearly in settlement negotiations, where one party is trying to convince the other party to alter their position. However, in taxation matters this reality is more acute since, as will be discussed below, should the Commissioner be unconvinced of the taxpayer's position, the taxpayer does bear the formal burden of proof once the matter goes to litigation under s 14ZZK(b).[12]

B *Proceedings Before the Administrative Appeals Tribunal*

Once the Commissioner has made an objection decision, if the taxpayer is dissatisfied with that decision, the taxpayer may exercise further review rights under Part IVC.

At this point, the taxpayer is faced with a decision themselves: under s 14ZZ, for reviewable objection decisions (which are the type of objection decisions discussed here), the taxpayer may choose to have this reviewed in the AAT or the Federal Court. This decision may be dictated by certain considerations, for example, if the objection relates to the review of the exercise of a discretion vested in the Commissioner, this will normally necessitate commencing proceedings in the AAT, since the exercise of a discretion itself does not constitute a question of law and, therefore, is normally beyond the Federal Court's jurisdiction.[13]

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10 For further guidance see ATO, *Income Tax: Objections Against Income Tax Assessments* (TR 2011/5, 19 October 2011). See also Alan Krawitz, 'Handling a Tax Dispute from Assessment to Litigation' (Conference Paper, Contentious Tax, The Tax Institute, 9 September 2014) 24–25; Robert Richards, 'Handling a Tax Dispute: Drafting the Objection and Negotiating a Solution' (Conference Paper, Manoeuvring the Maze: Tax Forum, The Tax Institute, 24 May 2007) 9–10.

11 For example, in reviews before the Administrative Appeals Tribunal ('AAT'): see *TAA 1953* (n 8) s 14ZZK(a).

12 For a discussion of how this formal burden of proof permeates the entire process, including pre-litigation stages see Eddy Moussa and Madeleine Daly, 'Burden of Proof in Tax Disputes and Why it Matters' (Conference Paper, NSW 11th Annual Tax Forum, The Tax Institute, 25 May 2018).

13 The distinction between a question of fact and question of law, and the implications for the litigation process is explored in further detail below. In respect of the matters to be considered in choosing the venue in which to commence litigation see Timothy Poli, 'Deciding to Appeal an Objection Decision and Assessing Your Prospects' (Conference Paper, Disputes & Litigation Half Day, The Tax Institute, 15 September 2016) 6–8; Krawitz (n 10) 27–32; Rodney Dunne, Helen Lacey and Arlene Macdonald,

Where the taxpayer elects to commence proceedings in the AAT, the process is governed by Division 4 of Part IVC. The AAT is generally governed by the *Administrative Appeals Tribunal Act 1975* ('*AAT Act*'), although Part IVC modifies this operation in some very important respects.[14]

One important modification that bears significant practical implications is the non-application of s 41 of the *AAT Act*, which provides the AAT with the power to stay the implementation of decisions that are subject to its review. Section 14ZZB removes the AAT's power in this regard with respect to Part IVC proceedings, which then implements s 14ZZM. In the context of a valid notice of assessment being conclusive evidence of the debt being owed to the Commissioner,[15] this means that the Commissioner may pursue recovery proceedings (which may result in bankruptcy or insolvency of the taxpayer), even while a legitimate challenge to the assessment is underway pursuant to Part IVC.[16]

The provision of most significance with an AAT review is s 14ZZK. As noted earlier, in challenging the taxation decision, that provision limits the taxpayer to the grounds stated in the taxation objection, although the taxpayer may seek leave to amend those grounds if they wish to pursue a fresh argument.[17]

Of perhaps greater significance, though, is s 14ZZK(b), which places the burden of proof upon the taxpayer. While not strictly a reverse burden of proof (after all, such reviews are applications brought by the taxpayer), this legislative position does create some significant practical problems for taxpayers. For example, the taxpayer may find themselves in a position where they are required to prove a negative element of the law (such as they did not have an intention to enter into a transaction with the intention of making a profit in a *Myer Emporium*[18] sense). The ability and the means by which a

'Running a Tax Dispute at the AAT; Part 1: The Choice Between the AAT or the Federal Court' (Conference Paper, South Australian Convention: In Tune with Tax, The Tax Institute, 4 May 2007).

14 See *TAA 1953* (n 8) ss 14ZZA–14ZZJ.

15 See *Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd* (2008) 237 CLR 473. The relevant legislative provision is now found in *ITAA 1997* (n 7) s 350-10(1) item 2 (replacing former section 177 of the *ITAA 1936*).

16 Alleviating the potential injustice associated with this regime, the Commissioner has published an administrative practice statement to deal with such scenarios: see ATO, *Collection and Recovery of Disputed Debts* (PSLA 2011/4, 14 April 2011). As a general rule, the Commissioner will normally agree to suspend recovery proceedings pending the outcome of a Part IVC review upon the taxpayer paying 50 per cent of the debt at the outset (noting that the remaining half will continue to accrue general interest charge while it remains outstanding, which will become part of the amount recoverable should the review not be resolved in the taxpayer's favour). For further discussion see Krawitz (n 10) 34–35.

17 *TAA 1953* (n 8) s 14ZZK(a). With respect to the granting of leave, this is largely left to the AAT's discretion as the AAT has the power to determine its own procedure and is not bound by the formal rules of evidence: see *Administrative Appeals Tribunal Act 1975 (Cth)* ('*AAT Act*') s 33).

18 *Commissioner of Taxation v The Myer Emporium Ltd* (1987) 163 CLR 199.

taxpayer may meet this burden has been a matter of interest for some time, with recent judicial comment providing some guidance.[19]

In the context of a challenge to an assessment, s 14ZZK(b)(i) provides the second critical element that taxpayers face. This provision requires that the taxpayer prove that the assessment is excessive and, importantly, what the assessment should have been.

In understanding the heavy onus that this places on taxpayers, it is apposite to note that the general understanding that the Commissioner does not need to have any basis — let alone a reasonable basis — for adopting their position which forms the basis of the assessment. This position is most clearly stated by Mason J (as his Honour then was) in discussing the former s 190(b) of the *ITAA 1936* (now contained in s 14ZZK) in *Gauci v Federal Commissioner of Taxation*:

> The Act does not place any onus on the Commissioner to show that the assessments were correctly made. Nor is there any statutory requirement that the assessments should be sustained or supported by evidence. The implication of such a requirement would be inconsistent with s. 190(b) for it is a consequence of that provision that unless the appellant shows by evidence that the assessment is incorrect, it will prevail.[20]

This statutory position is normally justified on the basis that the taxpayer has an informational advantage vis-à-vis the Commissioner, in that while the taxpayer inherently has a comprehensive knowledge of their own circumstances, the Commissioner must obtain information from other sources.[21]

In fairness, the Commissioner usually does provide some basis for their position. For example, the Commissioner often uses a technique known as 'asset betterment assessments' in which the Commissioner analyses the taxpayer's declared position compared with their known asset position. If there is an unexplained discrepancy between income reported and accumulated assets, the Commissioner may then use their powers under s 167 of the *ITAA 1936* to issue a default assessment.[22] However, it is clear from the interpretation of s 14ZZK(b)(i) that it is insufficient for the taxpayer to undermine the Commissioner's approach, even successfully. Doing so successfully merely

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19 *Commissioner of Taxation v Cassaniti* (2018) 266 FCR 385. See also commentary on this case and the practical implications of the decision in Gareth Redenbach, 'How Taxpayers can Discharge their Burden of Proof' (Conference Paper, VIC 7th Annual Tax Forum, The Tax Institute, 17–18 October 2019). Further discussion of the considerations and problems associated with the taxpayer's burden of proof in litigation is provided in Moussa and Daly (n 12); Clare Thompson, 'Taking a Dispute to the AAT and Proving your Case' (Conference Paper, Contentious Tax, The Tax Institute, 9 September 2014); Daniel Grosch and Angela Wood, 'The Taxpayer's Heavy Burden' (2013) 47(6) *Taxation in Australia* 358; Bradley Jones, 'The Role of the Burden of Proof in Tax Appeals' (2009) 43(11) *Taxation in Australia* 650.

20 (1975) 135 CLR 81, 89 ('*Gauci v FC of T*'). See also *Commissioner of Taxation v Dalco* (1990) 168 CLR 614. This interpretation may be traced at least as far back as 1936 in *Trautwein v Commissioner of Taxation* (1936) 56 CLR 63, 87–88; *George v Commissioner of Taxation* (1952) 86 CLR 183.

21 See, eg, *Gauci v FC of T* (n 20) 89 (per Mason J).

22 For an example of the use of asset betterment analyses and their legitimacy see *Gashi v Commissioner of Taxation* (2013) 209 FCR 301.

establishes that the assessment was excessive. The taxpayer is also required to establish, using evidence, what the assessment should have been — not doing so merely establishes that the assessment was excessive, but does not satisfy the second requirement in s 14ZZK(b)(i), leading to the taxpayer failing to discharge their burden.[23]

The Commissioner's ability to levy assessments without a reasonable basis, whilst in strict compliance with the terms of s 14ZZK, may be tempered by obligations imposed under the Model Litigant rules.[24] This area — at least as it relates to obligations for the Commissioner to provide a basis for their position in litigation (potentially in contrast to s 14ZZK) — remains relatively unexplored.

In respect of the conduct of a matter before the AAT, as has been noted,[25] the AAT may, subject to any statutory requirements, follow its own procedure[26] and is not bound by the formal rules of evidence.[27] So, for instance, there is no restriction on the AAT admitting hearsay evidence that may otherwise be precluded from a judicial proceeding. This is tempered by the weighting that the AAT may attribute to such evidence.

The AAT is also permitted to admit evidence that was not considered when the assessment was raised, or even had not been available at that time. This is an application of the principle that the AAT should base its decisions on the best available evidence at the time that the AAT (and not the original decision maker) makes its decision.[28] This reflects the normal situation, in that the AAT conducts a hearing *de novo* and is not reviewing the correctness of the original decision. Whilst not strictly the case in taxation

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23 There are numerous cases in which the taxpayer has failed for not submitting evidence as to what the assessment should have been (whether or not the evidence submitted did establish that the assessment was excessive) and reiterating that merely identifying inaccuracies in the Commissioner's process leading to the assessment is insufficient. For some recent examples see *Bosanac v Commissioner of Taxation* [2019] HCA 41 (and the decision of the Full Federal Court in that matter: *Bosanac v Commissioner of Taxation* [2019] FCAFC 116); *HFTS and Commissioner of Taxation* [2019] AATA 5164; *NGFZ and Commissioner of Taxation* [2019] AATA 5410.

24 See Paula Thorne and Brad Prentice, 'Tax Litigation from the Commissioner's Perspective' (Conference Paper, Annual States' Taxation Conference, The Tax Institute, 27 July 2016), noting that this considers the Model Litigant rules as they apply to the State Commissioners, although the same consideration arises in a Commonwealth context. See also Eugene Wheelahan, 'Model Litigant Obligations: What Are They and How Are They Enforced?' (Seminar Paper, Federal Court Ethics Seminar Series, 15 March 2016); Ron Jorgensen and Megan Bishop, 'The Rule of Law and the Model Litigant Rules' (2011) 45(11) *Taxation in Australia* 678; ATO, 'Our Obligations as a Model Litigant' (Web Page, 25 October 2018) <https://www.ato.gov.au/general/dispute-or-object-to-an-ato-decision/model-litigant>.

25 Above n 16.

26 *AAT Act* (n 17) s 33(1)(a).

27 Ibid s 33(1)(c).

28 See *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286, 399 where His Honour, Kirby J, states: 'But ultimately, it was for the Tribunal to reach its own decision upon the relevant material *including any new, fresh or additional material that had been received by the Tribunal as relevant to its decision*' (emphasis added).

matters (given that Part IVC is premised on a review of the assessment in question), this principle does also apply in this context.

An interesting consideration is the application of certain common law principles developed for the conduct of litigation. Of particular note in this regard are the decisions in *Browne v Dunn*[29] and *Jones v Dunkel*.[30] Both of these principles were developed in the criminal law jurisdiction, although they are also relevant to civil litigation. The application in the latter jurisdiction is less clear than in criminal proceedings, with the emphasis of both principles being on fairness in proceedings.

In brief, *Browne v Dunn* requires that where a party intends to present a theory of the case that contradicts a particular witness' account, that contradiction should be put to the witness directly. This is designed to provide the court with as much material as possible to reconcile competing accounts of the factual matrix submitted. The rule in *Jones v Dunkel* allows a court, in certain circumstances to draw negative inferences where one party does not call a witness who may have been expected to assist that party's case. These summaries are necessarily severely abbreviated in this part and both have been subject to much academic consideration in a general context.[31] However, there is still significant debate as to their application in particular contexts and precious little has been written on their application (or non-application) in taxation litigation.[32]

C *Beyond the Administrative Appeals Tribunal*

Following the outcome of the review in the AAT, the disappointed party may appeal to the Federal Court (or, in some cases, directly to the Full Federal Court[33]).[34] Importantly, such appeals are restricted to questions of law only.[35] The appealing party must also lodge its appeal within 60 days of being served with the notice of the AAT's decision.[36]

The distinction between a question of law and question of fact represents perhaps the most significant focus for parties seeking to appeal. To continue pursuing the litigation process, the party needs to identify a question of law emanating from the AAT's decision.

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29 (1893) 6 R 67 (HL).

30 (1959) 101 CLR 298.

31 For a detailed overview of both principles see John D Heydon, LexisNexis Butterworths, *Cross on Evidence: Australian Edition*, [17435]–[17460], [1215] for a discussion of the principles in *Browne v Dunn* and *Jones v Dunkel* respectively.

32 For example, see the brief comments in Jonathon Leek, 'Tax Dispute Resolution in the Modern Era' (2017) 21(2) *The Tax Specialist* 51, 59 (both principles). See also Stephen Linden, 'Evidence' (Conference Paper, Effectively Managing Tax Disputes: From Audit to Litigation, The Tax Institute, 16 April 2013).

33 This may occur where the AAT was constituted by a Presidential Member, who are all Judges of the Federal Court: see *Federal Court of Australia Act 1976* (Cth) s 20(2); *AAT Act* (n 17) s 44(3).

34 *AAT Act* (n 17) s 44(1).

35 Ibid s 44(1).

36 *TAA 1953* (n 8) s 14ZZN.

Put more directly, the party needs to identify an error of law (which thereby gives rise to the relevant question) in the AAT's reasoning. Without identifying such a question of law, the Federal Court will not have jurisdiction to hear the appeal.

Distinguishing between questions of law and questions of fact can be a somewhat fraught process. As this is the central tenet of the Federal Court's jurisdiction to hear tax appeals, it is often one of the first points to be dealt with at a hearing. Drawing the distinction in any meaningful way is far beyond the scope of this paper. However, it is sufficient to note that this is a frequent matter dealt with in appellate hearings[37] as well as some, but far from extensive, commentary.[38]

D *The Small Business Taxation Division*

On 1 March 2019, the Small Business Taxation Division ('SBTD') within the AAT began dealing with tax matters meeting certain criteria aimed at identifying small business tax disputes.[39] The SBTD has been established as a means of addressing small business concerns regarding the stress and intimidation associated with litigating against the Australian Taxation Office, as well as the asymmetry in expertise, time and resources associated with this process[40] and is designed 'to provide a cost effective review process that is accessible to small businesses and tailored to achieve resolution at the earliest opportunity in an individual case'.[41]

The operative provisions facilitating the SBTD are found in the *Administrative Appeals Tribunal Regulation 2015* ('*AATR 2015*').

In brief, where a small business taxpayer has a dispute with the Commissioner, the matter may be heard in the SBTD for a reduced fee (further reduced if the amount in dispute is

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37 Two significant decisions addressing this matter are *Haritos v Commissioner of Taxation* (2015) 233 FCR 315 and *Collector of Customs v Pozzolanic Enterprises Pty* (1993) 43 FCR 280, which was considered at length by the High Court in *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389. It is also important to note that this concept is also incorporated into State appellate procedure (see, eg, *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 148) and is not restricted only to revenue law matters, with the consequence that this issue is dealt with throughout all jurisdictions and legal subject areas.

38 See, eg, Justice Duncan Kerr, 'What is a Question of Law Following *Haritos v Federal Commissioner of Taxation*?' (Seminar Paper, Hot Topics Seminar: Commonwealth Compensation, 25 November 2016); Jennifer Batrouney, 'The Distinction Between Questions of Fact and Questions of Law in Section 44 Appeals to the Federal Court' (Seminar Paper, Tax Bar Association Seminar, 20 May 2014); Justice Stephen Gagelar, 'What is a Question of Law?' (2014) 43(2) *Australian Tax Review* 68.

39 For cross-jurisdictional commentary on the operations and efficacy of specialist small tax dispute resolution mechanisms see Melinda Jone and Andrew Maples, 'Small Tax Dispute Resolution in New Zealand: Is There a Better Way? A Consideration of Overseas Processes' (2019) 25(2) *New Zealand Journal of Taxation Law and Policy* 137 (which includes some brief comments on the AAT's Small Business Taxation Division: at 171–172. See also Andrew Maples, 'Resolving Small Tax Disputes in New Zealand – Is There a Better Way?" (2011) 6(1) *Journal of the Australasian Tax Teachers Association* 96.

40 Assistant Treasurer, Stuart Robert, 'Backing Small Business – Simplifying and Resolving Tax Disputes' (Media Release, 12 February 2019).

41 AAT, 'Guide to the Small Business Taxation Division' (Report, 1 March 2019) 4 [2].

less than AUD5,000) and with the expectation that the parties are either unrepresented or that the Commissioner will pay the costs of the taxpayer's equal representation. Matters in the SBTD are to be decided by the AAT within 28 days of the last submissions being received.[42]

The reduced fee of AUD500 is provided for in s 20(1A) of the *AATR 2015*. Where the amount of the tax in dispute is less than AUD5,000, a further reduced fee of AUD91 is outlined in s 20(2).[43]

To access the reduced fee of AUD500 in s 20(1A) of the *AATR 2015*, the review must be of a 'small business taxation decision'. This term is defined in s 5 as being a decision made under a taxation law (essentially any law over which the Commissioner has administration powers) and, importantly, in relation to a 'small business entity'. This latter term takes its definition from the *Income Tax Assessment Act 1997* ('*ITAA 1997*'), which details the relevant definition in s 328-110. In essence, to qualify as a small business entity, the entity needs to be carrying on a business and have annual turnover of less than AUD10 million.

Of some interest are these two elements determining the SBTD's jurisdiction. Strictly speaking, the considerations set out below have not arisen recently, as these elements are obtained from division 328 of the *ITAA 1997* ('Division 328'), which are the criteria used to determine access to certain small business concessions (outlined in the table at *ITAA 1997* s 328-10 and most notably include the variety of concessions (mainly aimed at simplification) contained in Division 328 and the capital gains tax concessions in division 152 of the *ITAA 1997*). However, as the SBTD's jurisdiction is determined by these concepts, they have become arguably more likely to arise in a litigation context.

Firstly, a dispute may arise as to whether the taxpayer is carrying on a business. As a practical matter for litigation purposes, the question of whether a taxpayer had been carrying on a business has lost much of its past significance with the expansion of the income tax net (particularly with the introduction of the capital gains tax). However, by incorporating this concept into the SBTD's jurisdictional boundaries, this matter could become a live litigation issue again and may merit research in anticipation of this eventuality.[44]

Secondly, 'annual turnover' is defined in s 328-120(1) of the *ITAA 1997* to mean the ordinary income derived by the entity in the ordinary course of carrying on its business (for clarity, *ITAA 1997* s 328-120(2) states that these amounts are exclusive of applicable goods and services tax). As a jurisdictional matter, distinguishing between ordinary

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42 Further details beyond those discussed in this paper may be found in the AAT's Guide to the Small Business Taxation Division: see ibid.

43 Annual indexation of these fees is provided for in *Administrative Appeals Tribunal Regulation 2015* (Cth) s 27 ('*AATR 2015*'). A flat fee (unindexed) of AUD100 is provided for in *AATR 2015* s 20(3) in the circumstances set out in *AATR 2015* s 21.

44 As noted, this issue is one of the preconditions for accessing certain small business concessions and, consequently, arises somewhat frequently as a central issue in dispute at the lower end of the litigation hierarchy; for a recent example see *SWPD and Commissioner of Taxation* [2020] AATA 555.

income receipts that are received in the course of a business as opposed to those received in the 'ordinary course' of carrying on that business may become important in marginal cases. Whilst it may be clear that capital receipts are excluded (being a well-established exclusion from ordinary income), there may be more debate as to whether certain ordinary income receipts, whilst being received in the course of a business, are not received in the ordinary course of a business, even though they may have the requisite profit-making intention. The receipt in issue in the *Myer Emporium* decision immediately springs to mind as an example (although, it could be noted, it may be said that that particular taxpayer is unlikely to come within the SBTD's jurisdiction). Such considerations may require a more precise delineation of the boundaries of a taxpayer's ordinary course of business than what has hitherto been required when considering more fundamental matters, such as the (general) capital/revenue distinction.

III AREAS FOR FURTHER RESEARCH

Based on the above comments, the following areas, in no particular order, represent (from a practitioner/decision maker perspective) useful inquiries for academic research:

1. Question of fact versus question of law;
2. Commissioner of Taxation as a model litigant. This may also include the Commissioner's ability to pursue recovery proceedings whilst a Part IVC dispute is on hand;
3. Taxpayer's ability to meet their burden of proof;
4. Meaning of fraud or evasion;
5. Ability to challenge determinations (e.g. fraud or evasion) and interaction with the burden of proof;
6. What constitutes an assessment?
7. When does time begin to run on amendment period?
8. Considerations with how the Commissioner of Taxation needs to form a basis for their position, particularly the model litigant rules and to what degree does (or should) the Commissioner have a basis for the position adopted in an assessment. This may be different in an audit context in which purported full disclosure has been made as opposed to a deemed or default assessment scenario, or where fraud or evasion is alleged;
9. Choice of forum, specifically whether litigation should be commenced in the AAT or the Federal Court. This may lend itself to an empirical study to see whether there is any relationship between choice of forum, the particular issues at hand and the success rate of challenging assessments;
10. Application of *Browne v Dunn* and *Jones v Dunkel* to tax litigation; and
11. Identifying when a taxpayer is carrying on a business and the means by which the boundaries of the ordinary course of that business may be identified.

The references provided in the discussion with respect to these areas provide the start of a reading list on those topics. In this regard, most of the secondary references provided are practitioner articles and, whilst written to a high standard, have a heavy practitioner emphasis rather than a more conceptual academic focus. Consequently, all of these areas represent fertile ground for academic input.

As a final note, most, if not all of the above potential research topics may raise separate considerations when applied to state taxation. Where the differences are sufficient, these could constitute discrete research projects in their own right.

TECHNICAL

IF PHILOSOPHERS CAN'T TELL US WHAT ART IS, CAN OFFICIALS?

JONATHAN BARRETT*

ABSTRACT

'One of the most elusive of the traditional problems of human culture [is] the nature of art.'[1] Over millennia, philosophers have failed to agree on what 'art' is or have resorted to an apparently circular reductivism, such as, art is what is found in an art gallery. Despite this uncertainty, it is not unusual for tax laws to initially place an interpretative duty on Revenue or Customs services to decide which things constitute artworks under particular pieces of legislation. This power to construct meaning is, however, constrained. In performing their hermeneutic function, officials construe laws and regulations created by lawmakers, and the ultimate interpretative power lies with the courts. The most famous, albeit not unique, example of officials engaging with artworks is the *Bird in Space* case which arose from customs officials in the United States categorising one of Constantin Brâncuşi's modernist sculptures as a hospital and kitchen supply.

This article surveys tax laws that require officials to engage in aesthetic judgment and analyses notable cases to elicit key issues. The principal purpose of the article is to consider whether a customs or revenue service, which presumably represents a broad cross-section of society but not art experts, should be charged with making such decisions. While the discussion is specific, it remains relevant to drafting tax statutes in general.

Keywords: art, artwork, customs duty, tariffs

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1 Richard Wollheim, *Art and Its Objects* (Cambridge University Press, 2nd ed, 1980) 1.

I INTRODUCTION

Differential tax or customs duty treatment occasionally requires officials to determine whether an artefact is an artwork or something more mundane. The most famous case in this field arose in the 1920s from the importation of an abstract sculpture into the United States: Constantin Brâncuşi's *Bird in Space* (1923).[2] Customs officers, who, understandably, were not versed in developments in modern art, classified the artefact as hospital and kitchen supplies,[3] and therefore was subject to customs duty as an 'article of utility' (a sculpture was free from customs duties under paragraph 1704 of the *Tariff Act 1922* (US) but 'articles of utility' were taxed at a rate of 40 per cent under paragraph 399 of that Act). Relevantly, the decision of an official is formally subject to judicial review,[4] and a customs court in *Brancusi v United States*[5] (*'Brancusi*') subsequently found the object to be a duty-free artwork. The *Brancusi* case is neither unique nor a historical curiosity. More recently, imports of artworks by celebrated contemporary artists Don Flavin, Bill Viola[6] and Bjarne Melgaard[7] have initially been treated as mundane objects subject to higher rates of duty or indirect tax than artworks.

'One of the most elusive of the traditional problems of human culture is the nature of art.'[8] As Joes Segal observes '[t]he concept of "art" itself is far from unambiguous and constantly subject to more or less (un)inspiring attempts to define it',[9] such as 'anything is art if it is

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2 See 'Constantin Brancusi, *Bird in Space*, c. 1941', *MoMA* (Web Page) <https://www.moma.org/collection/works/81503>. I use the orthographically correct 'Brâncuşi' to refer to the artist, but use 'Brancusi' when it was originally used in that form. As is usual with cast sculptures, the artist created a limited number of artefacts from the original plaster casts (15 in this case). That is why the MoMA statue is dated c 1941.

3 See Daniel McClean and Armen Avenessian, 'Trials of the Title: The Trials of Brancusi and Veronese' in Daniel McClean (ed), *The Trials of Art* (Ridinghouse, 2007) 37.

4 Because our knowledge of customs disputes is invariably derived from reported tribunal or court decisions, we do not know whether other controversial decisions were made but not appealed.

5 (1928) US Customs Court 3rd Div, N.209109-G.

6 Marina P Markellou, 'Rejecting the Works of Dan Flavin and Bill Viola: Revisiting the Boundaries of Copyright Protection for Post-Modern Art' (2012) 2(2) *Queen Mary Journal of Intellectual Property* 175.

7 Amah-Rose Abrams, 'Bjarne Melgaard's Brush with Customs Officials Helps Change Outmoded Laws in Norway', *ArtNet News* (Web Page, 18 November 2016) <https://news.artnet.com/art-world/bjarne-melgaard-norway-customs-regulations-752051>.

8 Wollheim (n 1) 1.

9 Joes Segal, *Art and Politics: Between Purity and Propaganda* (Amsterdam University Press, 2016) 11.

found in an art gallery'.[10] Marcel Duchamp defined 'art' as whatever an artist uses[11] but did not identify who an artist is. For art world insiders, tax and customs cases may provide droll evidence of barbarianism on the part of the bureaucracy — Daniel McClean and Armen Avenessian, for example, describe the *Brancusi* case as 'landmark, yet comical'.[12] Why should customs officials presume to resolve the ontological problems of art, when philosophers have failed to do so?

The assessments of the customs officials in the *Brancusi* case are likely to have reflected and represented the conceptions of art held by the general public at that time. Beyond the specific artwork (as the court found it to be), this and similar cases raise more generalisable questions about taxation and art. Invariably, an inquiry into the aesthetic nature of an artefact is prompted by an attempt to take advantage of a tax or customs duty concession extended to artworks. Assuming plausible grounds can be adduced for extending tax preferences to artworks,[13] subsequent policy questions include:

- Should the legislature seek to provide an exhaustive definition of an artwork?
- Should definitions be open-ended so that the Administration decides, unless a complainant has the motivation and economic wherewithal to take a dispute to court where a judge would then decide?
- Whose views on art should be represented — officials as presumptive bearers of a common sense most likely shared with the general public or art experts, such as artists, critics and academics?[14]

This article engages with these questions. Relevantly, Part II considers the problems of imported art, and outlines tax and customs duty cases where the nature of an artwork has been central to the judgment. Part III surveys different approaches to defining art in taxing statutes. Part IV discusses these approaches and comments on key policy issues prior to concluding in Part V.

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10 Stuart Culver, 'Whistler v. Ruskin: The Courts, the Public and Modern Art' in Richard Burt (ed), *Administration of Aesthetics: Censorship, Political Criticism, and the Public Sphere* (University of Minnesota Press, 1994) 149, 151. Sometimes objects can only make sense as artworks in the context of a gallery and supporting text. See, for example, Carl Andre's sculpture, *Equivalent VIII* (1966), commonly known as 'Bricks'.

11 Duchamp spoke of 'an ordinary objected elevated to the dignity of a work of art by the mere choice of an artist'. See Lois Fichner-Rathus, *Understanding Art* (Cengage Learning, 2012) 188.

12 McClean and Avenessian (n 2) 38.

13 At a level of principle, preferential tax treatment of art can be justified on the grounds of rewarding positive externalities, market failure and merit. See Kazuko Goto, 'Why Do Governments Financially Support the Creative Industries' in Sigrid Hemels and Kazuko Goto (eds), *Tax Incentives for the Creative Industries* (Springer, 2017) 21.

14 When claims are made to common sense, it is reasonable to ask: common to whom? Here, I mean a likely appeal to a broad range of different groups in society.

II THE ONTOLOGICAL PROBLEMS OF (IMPORTED) ART

This part of the article identifies the ontological problems that arise when art is imported and reviews customs and tax decisions on the nature of artworks.

A *Identifying Art*

Orson Welles reportedly quipped 'I don't know anything about art but I know what I like.'[15] Welles was one of cinematic art's greatest auteurs, and a noted aesthete, and so the first clause of his *bon mot* is implausible. His real point, as the author understands it, is this: we cannot avoid subjectivity in appreciating art or deciding what constitutes art in the first place. Accordingly, when a person is empowered to decide whether or not a thing should be classified as an artwork, they are bounded by their individual life experiences — their education, class background, cultural preferences and so forth.

Creating art is a primal human urge,[16] however, it seems likely that, from earliest times, certain people who were especially skilled in representing the natural world have been differentiated from others.[17] For millennia,[18] invariably anonymous craftworkers created artworks.[19] Only during the Renaissance did the creators of autographed paintings and sculptures become distinguished from unnamed artisans, such as stone masons, who remain typically unidentified.[20] In the Romantic era, this distinction became more entrenched as artists were garlanded with the laurels of creative genius.[21] Despite William Morris's fudging of the distinction between artist and artisan through his leadership of the Arts and Crafts movement,[22] in copyright law, at least,[23] the distinction between the things artists and artisans create is maintained.[24]

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15 Cited by Matias Masuccihttp, 'Orson Welles Quotes Collection', *Independent Society* (Blog, 5 August 2013) <http://indso.com/orson-welles-quotes>.

16 See Denis Dutton, 'Aesthetic Universals' in Berys Gaut and Dominic McIver Lopes (eds), *The Routledge Companion to Aesthetics* (Routledge, 3rd ed, 2013) 267.

17 For example, it seems implausible that the skill demonstrated by the Palaeolithic artists of the Lascaux cave was commonplace.

18 Australia is home to the world's oldest continuous culture — the author's perspective is Eurocentric.

19 See Margot Wittkower and Rudolf Wittkower, *Born Under Saturn: The Character and Conduct of Artists: A Documented History from Antiquity to the French Revolution* (W W Norton, 1963) 42.

20 See Erin J Campbell, 'Artisans, Artists and Intellectual' (2000) 23(4) *Art History* 622, 626.

21 See generally, Martha Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics* (Columbia University Press, 1994).

22 In order to accommodate the Arts and Crafts movement — notably the works of William Morris (see *George Hensher Ltd v Restawhile Upholstery (Lancs)* Ltd [1975] RPC 31) — English-heritage copyright law includes a special sub-category of 'artistic work' (work of artistic craftsmanship) that must manifest artistic quality. See *Copyright Act 1968* (Cth) s 10; *Copyright Act 1994* (NZ) s 2.

23 New Zealand's national museum Te Papa Tongawera includes furniture among its fine arts exhibitions.

24 The distinction that copyright law draws between different things can lead to ostensibly absurd results. For example, the most skilful and aesthetically pleasing traditional carving does not attract copyright protection if its design does not originate with the creator, whereas the drawings for something as

In the late nineteenth century, Impressionist and Post-Impressionist artists disrupted the state-controlled academies and salons.[25] Nevertheless, they continued to produce recognisable artworks that were soon received and celebrated as such. In contrast, Robert Hughes characterises the emergence of modern art in the early twentieth century as the 'Shock of the New'.[26] Along with other Dadaist and Cubist works, Duchamp's painting *Nude Descending a Staircase* (1912) was exhibited at New York's landmark Armory Show in 1913.[27] The social and cultural irruption of the Great War led people to create or appropriate things, and to present them as artworks when they bore no resemblance to the art of the past. Most notoriously, Duchamp (or perhaps it was his fellow, but lesser known, Dadaist Elsa von Freytag-Loringhoven) created *Fountain*, a purchased urinal altered only by the addition of the pseudonymous signature 'R Mutt'.[28] Thirteen years after the Armory Show, New York-based photographer, Edward Steichen, bought and imported a cast of Brâncuși's *Bird in Space*.

B *Tax and Customs Duty Cases*

According to Leonard DuBoff, customs tariffs, to the extent their purpose is to protect domestic firms are:[29]

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mundane as glue-packaging do. See *Henkel KgaA v Holdfast New Zealand Ltd* [2006] NZSC 102; [2007] 1 NZLR 577.

25 See 'Impressionism and Post-Impressionism', *Oxford Art Online* (Web Page, 2019) <https://www.oxfordartonline.com/page/impressionism-and-post-impressionism/impressionism-and-postimpressionism>.

26 See generally, Robert Hughes, *The Shock of the New: Art and the Century of Change* (Thames & Hudson, 1990).

27 See Tess Thackera, 'How the 1913 Armory Show Dispelled the American Belief that Good Art Had to Be Beautiful', *Artsy* (Web Page, 6 March 2018) <https://www.artsy.net/article/artsy-editorial-1913-armory-dispelled-belief-good-art-beautiful>.

28 Hughes (n 26) 66. For an image of the artefact, see 'Marcel Duchamp Fountain 1917, replica 1964', *Tate* (Web Page) <https://www.tate.org.uk/art/artworks/duchamp-fountain-t07573>.

Because the urinal used for the original *Fountain* was purchased in New York, US customs officials were not presented with the even trickier question of whether *Fountain* constituted a work of art or sanitary supplies. As noted, Duchamp argued that anything an artist uses is art. This argument reaches its nadir in Piero Manzoni's art piece, *Merda d'artista* (1961). In the late 1950s, protesting against the status of the saleable art object, the late Italian-born artist, Manzoni saved his own excrement. Every day he had it canned in little tins duly signed, numbered, dated and labelled 'Merda d'artista'. A local magistrate denied that the work constituted art. See John Henry Merryman, Albert E Elsen and Stephen K Urice, *Law, Ethics and the Visual Arts* (Wolters Kluwer, 5th ed, 2007) 672–673.

29 Customs duties are also revenue-raising instruments, and, historically, an important source of revenue. See J F Rees, *A Short Fiscal and Financial History of England 1815-1918* (Methuen, 1921) 3. Since works of fine art are expected to have no practical use, they could plausibly be the target of sumptuary taxes. Under the *Tariff Act 1907* (NZ), paintings and statuary fell into the category of 'Class X – Fancy Goods, Musical Instruments, etc' and were dutiable at the usual rate of 20 percent. However, certain paintings, statuary and works of art were duty-free in terms of Schedule B. These were artefacts imported for the collections of public institutions or for public display, such as a statue for a public park. A further exemption applied to:

> … only appropriate when foreign goods compete directly with domestic items. If a foreign produced item is unique and no domestically produced substitute exists, then there appears to be no justification for taxing the article upon its importation. The imposition of a tariff upon a unique foreign good has the effect of increasing the price to domestic consumers for an otherwise unavailable article.
>
> Consequently, when determining whether an item is to be given duty-free status as a work of art, customs law looks to see whether the imported piece will directly compete with [domestic] goods. Theoretically, works of art are unique to their creator and when they are not interchangeable with [domestic works of art], they are generally accorded duty-free status.[30]

Members of the World Customs Organization ('WCO'), including Australia, New Zealand, the United States and the European Union, have adopted the *International Convention on the Harmonized Commodity Description and Coding System*.[31] The European Union's *Common Custom Tariff* ('CCT')[32] therefore uses substantively the same nomenclature as the United States' *Harmonized Tariff Schedule*[33] in relation to artworks (chapter 97).[34] The European Union VAT directive in relation to imports, which provides for an effective rate for artworks as low as five per cent, is based on the CCT. Therefore, decisions from different jurisdictions on artworks in relation to different imposts are broadly relatable, although older decisions may relate to temporally and spatially particular rules.[35]

> Paintings or pictures [not statuary] or drawn by New Zealand students, within five years of the time of their departure from the colony for the purpose of undergoing a period of tuition abroad for the first time, upon evidence being produced to the satisfaction of a Collector of Customs.

30 Leonard D DuBoff, 'What Is Art – Toward a Legal Definition' (1990) 12 *Hastings Communications and Entertainment Law Journal* 303, 323. Sigrid Hemels observes:

> … artworks compete not only with each other, but also with other commodities, such as jewels, expensive cars and holidays. The consumer can spend his or her money only once. The art dealer who purchased Claes Oldenburg's work could have also purchased a work by Andy Warhol, Pablo Picasso, or Johannes Vermeer, Works of art do compete economically with each other or with other articles.

See Sigrid Hemels, 'Tax Incentives for the Art Market' in Hemels and Goto (n 13) 184.

31 UNTS 1503 (p 3) 1 January 1988.

32 Council Regulation (EEC) No 3000/80 of 28 October 1980 and Council Regulation (EEC) No 3300/81 of 16 November 1981 amending Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journals 1980 L 315, p 1, and 1981 L 335, p 1). The compendious explanatory notes to the CCT provide no comment on 'Section XXI Works of Art, Collectors' Pieces and Antiques'. See 'Explanatory Notes to the Combined Nomenclature of the European Union (2006/C 50/01)', *European Parliament* (Report, 2006) <http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/comitologie/info/2013/D026072-02/COM-AC_DI(2013)D026072-02_EN.pdf>.

33 See 'Harmonized Tariff Schedule (2019 Revision 16)', *US International Trade Commission* (Web Page, 2019) <https://hts.usitc.gov/>.

34 While some of the ECJ cases refer to differently numbered chapters, the current version of the CCT is consistent with the *International Convention on the Harmonized Commodity Description and Coding System*.

35 Daniel McClean argues that Chapter 97 of the European Union's CCT is 'derived indirectly from Article 1704' of the *Tariff Act 1922* (US). See Daniel McClean, '"I Would Prefer Not To" – The Legal Judgment of Art: The Trials of Brancusi v. United States (1928) and Haunch of Venison & Partners v. Her Majesty's

However, while WCO members must harmonise their import identifiers, subject to their World Trade Organization and free trade agreement commitments, they may set different rates of duty. Artworks are typically duty-free but the Trump Government, for example, imposed a 10 per cent tariff on imported Chinese artworks and antiquities in September 2019.[36]

This section of the article outlines key importation cases: firstly, the United States decisions that culminated in the *Brancusi* case; and secondly, more recent European Union decisions.

1 *The United States*

(a) Perry

United States v Perry[37] concerned imported stained glass windows to be installed in a church.[38] The *Tariff Act 1890* (US) para 122 provided for duty at a rate of 45 percent on 'all stained or painted window glass and stained or painted glass windows', whereas 'paintings in oil or watercolors' were dutiable at a rate of 15 percent.[39] The importer optimistically argued the windows were 'paintings *upon* glass'.[40] The court acknowledged the beauty of the artefacts but found them to be industrial or decorative in nature, rather than fine art. According to Emily Lanza, the Supreme Court identified four classes of art:

1) fine arts intended solely for ornamental purposes including oil paintings, watercolours, and marble statuary;

2) minor objects of art that are intended for ornamental purposes but are also 'susceptible of an indefinite reproduction' such as statuettes, vases, plaques, drawings and etchings;

3) objects of art that are primarily ornamental but also serve a useful purpose, such as stained glass windows, tapestries and paper hangings; and

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Revenue & Customs (2008)' (2011) 38 *Propriétés Intellectuelles* 20, 23. While he does not adduce evidence to support his claim, it is plausible. Officials' arguments across time and jurisdictions are remarkably similar.

36 Taylor Dafoe, 'The US Will Hit Chinese Art and Antiquities with an Additional 10 Percent Tariff Next Month as the Trade War Escalates', *The New York Times* (online, 15 August 2019) <https://news.artnet.com/market/chinese-art-antiquities-extra-tariff-1625869>.

37 146 US (1892).

38 See Leonard D DuBoff and Christy O King, *Art Law* (Thomson West, 4th ed, 2006) 1.

39 Emily Lanza, 'Brancusi's Bird in Space: Is it a Bird or is it Art?', *The Legal Palette* (Web Page, 20 March 2018) <https://www.thelegalpalette.com/home/2018/3/20/brancusis-bird-in-space-is-it-a-bird-or-is-it-art>.

40 Ibid (emphasis added).

4) objects primarily designed for a useful purpose but are made ornamental 'to please the eye', including ornamental clocks, carpets, gas fixtures and household furniture.[41]

Only the first category qualified for preferential treatment because works of art must be purely ornamental and must not have a practical use.[42]

(b) Olivotti

In *United States v Olivotti & Co*,[43] the customs court limited sculptures to portrayals of natural objects, chiefly the human form, represented in true proportions.[44] 'The court noted that a marble font and two marble seats, although admittedly beautiful, were not art within the meaning of the Tariff Act since they were not representations of a natural object.'[45] Crucially, 'the primary conception of these seats was to serve a useful purpose, and any artistic features were purely decorative'.[46]

(c) Brancusi

Paragraph 1704 of the *Tariff Act 1922* (US) exempted works of art from customs duty.[47] When Steichen imported *Bird in Space*, he claimed duty-free status for it. According to Thomas Hartshorne:

> Customs appraiser F. J. H. Kracke, acting on the advice of "several men high in the world of art" [decided it] was not properly a work of art and thus not entitled to duty-free entry into the country. Instead, he classified it as "a manufactured implement of bronze": and

41 Ibid.

42 See, eg, *O O Friedlaender Co v US*, 19 CCPA 198 (1931) where 'statuary' to be used as bookends were not found to be artworks. Benvenuto Cellini's *Salieri* (salt cellar), one of the most celebrated artefacts of the Renaissance, and universally recognised for its beauty, might not qualify as a work of art in terms of this definition. See discussion in *Mazer v Stein* 347 US 201 (1954). (For images and commentary on the salt cellar, see Giovanni Garcia-Fenech, 'Benvenuto Cellini and the world's most spectacular salt cellar', *Artstor* (Web Page, 6 July 2016) <https://www.artstor.org/2016/07/06/benvenuto-cellini-and-the-worlds-most-spectacular-salt-cellar/>.) Conversely, in *G Heilman Brewing Co v US* 14 CIT 614 (CIT 1990), decorated beer steins were accepted as fine art because they were chiefly used for display purposes. Cited by DuBoff and King (n 38) 6.

43 7 Ct Cust App 46.

44 See DuBoff and King (n 38) 2.

45 James J Fishman, 'The Emergence of Art Law' (1977) 26 *Cleveland State University Law Review* 481, 485 n 23.

46 Lanza (n 39).

47 For a critical analysis of the Act, see F W Taussig, 'The Tariff Act of 1922' (1922) 37(1) *Quarterly Journal of Economics* 1.

> assessed the 40 percent ad valorem duty prescribed for household and hospital utensils in metal.[48]

With financial assistance from Gertrude Vanderbilt Whitney, Steichen challenged the customs classification. The witnesses for Brâncuşi were Steichen, 'the sculptor Jacob Epstein, Forbes Watson, editor of *The Arts*, Frank Crowninshield editor of *Vanity Fair*, William Henry Fox, curator of the Brooklyn Museum of Art, and Henry McBride, art critic of the *New York Sun'*.[49] The witnesses for the government were 'Robert I. Aitken, a sculptor whose statues and monuments stood in many parks and public buildings, and Thomas H. Jones, a sculptor and teacher of sculpture at Columbia University'.[50]

In the light of precedent, Justice Waite, the presiding judge, showed a remarkable openness in accepting *Bird in Space* as a sculpture. While the author acknowledges having limited knowledge of this judge, it is, perhaps, the Armory Show and the debate and commentary that followed it that normalised the idea of modern art among informed New Yorkers. *Bird in Space* challenged the customs court to consider art differently, in particular, to relinquish the representational requirement. While the court in *Brancusi* did not specifically articulate a new definition of art, its recognition and acceptance of abstraction was a significant departure from *Olivotti*. However, the decision is not as radical as it might first appear. The artefact was accepted as a sculpture because it was intended to be used purely to please the eye: this finding entrenches the questionable distinction between fine art, and arts and crafts. It was beautiful and symmetrical in outline: this requirement entrenches conservative perceptions of art, yet much of modern art sought to challenge traditional aesthetics. It was the work of a professional sculptor:[51] this requirement also entrenches arguably unnecessary distinctions between creators of 'useless' and 'useful' artefacts.[52]

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48 Thomas L Hartshorne, 'Modernism on Trial: C. Brancusi v. United States (1928)' (1986) 20(1) *Journal of American Studies* 93, 94. The particular kitchen or hospital use to which *Bird in Space* might be put is not immediately obvious.

49 Ibid 97.

50 Ibid 99. According to the Smithsonian, 'Some of Aitken's famous works include monuments to the Navy and to President William McKinley'. See 'Robert Aitken', *SAAM* (Web Page) <https://americanart.si.edu/artist/robert-aitken-40>. Thomas Hudson Jones is best known for his frieze at the Arlington memorial for the Unknown Soldier. See 'Thomas Hudson Jones', *Society of the Honor Guard, Tomb of the Unknown Soldier* (Web Page, 10 June 2014) <https://tombguard.org/column/2014/06/thomas-hudson-jones>. Aitken and Jones were, no doubt, highly competent sculptors but also conservative practitioners, embedded in the traditions of the (military) establishment.

51 See DuBoff and King (n 38) 3. Paul Kearns, *The Legal Concept of Art* (Hart, 1998) 164–165 records that an old totem pole was assessed for duty because the sculptor was not identified.

52 Compare the constitutional promotion of 'the useful arts' in the United States: see Edward C Walterscheid, 'To Promote the Progress of Science and Useful Arts: The Background and Origin of the Intellectual Property Clause of the United States Constitution' (1994) 2(1) *Journal of Intellectual Property Law* 1.

(d) Wannamaker

In *United States v Wannamaker*,[53] woollen copies of tapestries were treated as items of wool, rather than 'free fine art' because evidence was not shown that the work was done — or overseen — by an artist.[54] Following amendments to the tariff statute in 1958, emphasis was placed on the artist as a professional sculptor, with that status being indicated by art school certification, exhibition at pure fine art work shows, and critical recognition.[55] An artist was thought to work from inspiration and skill — original paintings executed solely by hand have special status; fine art does not include items of utility or those with a commercial use.[56]

2 *European Union*[57]

(a) Firma Farfalla Fleming und Partner

In *Firma Farfalla Fleming und Partner v Hauptzollampt München-West*,[58] paperweights, executed entirely by hand in limited series and signed by well-known glass work artists were denied fine art status because they were considered works of a commercial character to be judged by their constituent materials. Farfalla Flemming presented the goods for customs clearance and declared them as '[o]riginal sculptures and statuary, in any material', an exempt class of goods. However, the court found them to be dutiable 'glassware ... for indoor decoration, or similar uses'.[59] The European Court of Justice ('ECJ') applied 'the principle of the objective characteristics and qualities of a good' whereby the court, in order to identify the proper category to classify a product, seeks to identify the objective characteristics and qualities of the thing in dispute.[60] In this case, the objects had the objective characteristics and qualities of paper weights, rather than sculptures. This approach obviates reliance on experts, who might, for example, claim a *urinoir trouvé* is a sculpture.

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53 19 CCPA 229 (1931).

54 Ibid 231.

55 See DuBoff and King (n 38) 4.

56 See ibid 5.

57 For an in-depth examination of the European decisions, see Bert Demarsin, 'Qu'est-ce qu'une oeuvere d'art en droit de douane? Antholgie des manifestations perturbantes and des juges perturbés' in André Puttemans and Bert Demarsin (eds), *Les Aspects Juridiques de l'Art Contemporain* (Larcier, 2013) 84.

58 [1990] ECR 1-3387.

59 Ibid [4]–[5]. Demarsin (n 57) 109 notes that the United States also refused to treat the works of the master glass-blowers René Lalique and Henri Navarre as works of art for customs purposes.

60 See Christina Sala, 'The Definition of Art in the Customs Law' (Working Papers Series International Trade Law, Istituto Universitario di Studi Europei, 2014) 26.

(b) Raab

Ingrid Raab v Hauptzollamt Berlin-Packhof[61] concerned the importation of 36 photographs by Robert Mapplethorpe, who is widely considered to have been one of the leading artists of the late twentieth century.[62] The ECJ held:

> Original engravings, prints and lithographs … and artists' screen prints … are characterized by the personal intervention of the artist in executing the original by hand, and only the reproduction of the original may be carried out by means of a mechanical printing process. Art photographs therefore cannot be classified [as original engravings, prints and lithographs] nor may they be regarded as artists' screen prints … All photographs must be classified, regardless of whether or not they are artistic, under … a residual heading which covers all artistic printed matter not listed or referred to in any other heading ...[63]

(c) Huber

In *Volker Huber v Hauptzollamt Frankfurt am Main-Flughafen*,[64] the ECJ was required to determine whether certain prints should be considered original lithographs. The artist hand executed plates but did not sign or number the prints, which were produced by a mechanical press using a reprinting process that allowed multiple impressions to be made. The court held that the lithographs were original, notwithstanding the mechanical process and the reprinting.[65]

(d) Onnasch

In 1982, Reinhard Onnasch, a Berlin gallerist, imported from the United States *Modi. Motor Section – Giant Soft Fan*,[66] a wall relief by the American artist Claes Oldenburg. The work measures 61 cm by 87.5 cm by 31.5 cm, and is made from cardboard glued to expanded polystyrene, sprayed with black paint and oil, and attached by means of wire and synthetic resin to a wooden panel. The Museum of Modern Art ('MoMA') explains:

> Here Oldenburg has rendered a hard object in a soft material so that it sags and droops, and he has greatly inflated its size. There is humor in this transformation of a hard machine into a collapsible object, and the result has a bodily and sexual connotation.[67]

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61 C- 1/89 (13 December 1989) ('*Raab*').

62 See 'Collection Online: Robert Mapplethorpe', *Guggenheim* (Web Page, 2019) <https://www.guggenheim.org/artwork/artist/robert-mapplethorpe>.

63 *Raab* (n 61) 4423.

64 Case 291/87 (14 December 1988).

65 Compare with *Westfälischer Kunstverein v Hauptzollamt Münster* (C 23-77) [1977] ECR 1985 in which the court held that works that were not produced by the hand of the artist — even if the print run was limited and the artist signed the prints – did not qualify as duty-privileged original works.

66 See 'Claes Oldenburg *Giant Soft Fan* 1966-67', *MoMA* (Web Page, 2019) <https://www.moma.org/collection/works/82053>.

67 Ibid.

The defendant, supported by an opinion of the Zolltechnische Prüfungs und Lehranstalt [Customs Laboratory and Training College], conceded the object constituted a work of art but denied it was a sculpture because it was not made from a hard material following traditional techniques of sculpturing. The ECJ held that the identifier 'original sculptures and statuary, in any material' refers to all three-dimensional artistic productions, irrespective of the techniques and materials used.[68]

(e) Gmurzynska

In 1988, Berlin gallerist Krystyna Gmurzynska bought László Moholy-Nagy's painting *Konstruktion in Emaille I (Telefonbild)* (1923),[69] which consists of a steel plate with a fused coating of enamel-glaze colours, in the Netherlands for the sum of USD400,000 for import into Germany. The Revenue Office's classification as 'other ornaments, of base metal' meant the work was subject to the full rate of German turnover tax on imports.[70] Gmurzynska argued *Telefonbild* should be considered as a work of art that constitutes a painting executed entirely by hand within the meaning of Heading 9701, and therefore was subject to a lower rate of tax. The court agreed with Gmurzynska.[71]

(f) Haunch of Venison

Unlike the ECJ decisions, experts were called to give evidence in the *Haunch of Venison* case.[72] This involved the importation of the components of works by Don Flavin (light fittings with assembly instructions)[73] and Bill Viola (audio-electronic equipment with assembly instructions).[74] The judges visited the Tate Modern gallery to see the assembled Flavin sculpture on display. It would have been unusual for them to conclude that the

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68 *Reinhard Onnasch v Hauptzollamt Berlin-Packhof* (C-155/84) European Court of Justice <http://curia.europa.eu>.

69 See 'László Moholy-Nagy *EM 2 (Telephone Picture*) 1923', *MoMA* (Web Page, 2019) <https://www.moma.org/collection/works/78747>.

70 *Krystyna Gmurzynska-Bscher v Oberfinanzdirektion Köln* (C-231/89) European Court of Justice <http://curia.europa.eu/juris/liste.jsf?language=en,T,F&num=231/89>.

71 Hemels and Goto (n 13) 184 observes that the reason the work is titled *Telefonbild* (telephone picture) is that Moholy-Nagy did not paint it himself but rather gave instructions to artisans in a sign factory by telephone.

72 *Haunch of Venison Partners Ltd v Her Majesty's Commissioners of Revenue and Customs*, London Tribunal Centre, released on 11 December 2008. For a discussion, see Pierre Valentin, 'UK: The European Commission Says It's Not Art', *Mondaq* (Web Page, 20 June 2011) <http://www.mondaq.com/uk/x/135086/Music+and+the+Arts/The+European+Commission+Says+Its+Not+Art>.

73 According to McClean (n 35) 22, the gallery only expressed an intention to import Don Flavin's *Six Alternating Cool White/Warm White Fluorescent Lights, Vertical and Centered* (1973).

74 Including Bill Viola's *Man of Sorrows* (2001) and *Catherine's Dream* (2002).

components really were just fluorescent tubes and other mundane items having seen the assembled work in a leading public gallery.[75]

A curious feature of this case was Her Majesty's Revenue and Custom's attempt 'to have its cake and eat it'. On the one hand, it purported to levy duty on the items as if they were not (components of) artworks,[76] but, on the other hand, assessed the import value as if they were assembled artworks. The tribunal found that the items were the components of sculptures to be assembled and therefore dutiable at the preferential rate. The European Commission promptly issued a regulation clarifying the CCT to exclude video-sound installations and light art installations from the definition of sculpture.[77]

(g) Melgaard

Norway charges concessional rates of VAT (*Merverdiavgift*) on imported works of art.[78] The term 'works of art' is not defined in the taxing legislation, however the Ministry of Finance may promulgate regulations on its meaning. In 2016, Norwegian customs officials retained 16 imported paintings by Bjarne Melgaard, one of the country's most prominent artists, and demanded Melgaard pay NOK 1.3 million (AUD210,000) — the full rate of tax on imported goods.[79] According to officials:

> Melgaard's paintings were not entirely produced by his own hand because the canvas is a digital portrayal (an impression on the canvas that's part of the motif of the oil painting) and can therefore not be seen as a painting according to the tariff rules.[80]

The Minister of Finance reportedly intervened to clarify the regulations to ensure the works were taxed at the concessional rate.[81]

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75 Rachel Tischler observes that that Flavin's sculptures do not stop being sculptures when the caretaker turns the electricity off at night, and, conversely, they do not start to be artworks when fully assembled and the lights turned on. See Rachel J Tischler, '"The Power to Tax Involves the Power to Destroy" How Avant-Garde Art Outstrips the Imagination of Regulators, and Why a Judicial Rubric Can Save It' (2012) 77(4) *Brooklyn Law Review* 1665, 1685.

76 The first part of HMRC's argument had some support from the decision in *Develop Dr Eisbein GmbH & Co v Hauptzollamt Stuttgart-West* (Case C-35/93) in which the ECJ held that nomenclature related to dissembled parts, rather than the thing they would be finally assembled into. But that case related to photocopiers, not works of art.

77 See Commission Regulation (EU) No 731/2010 of 11 August 2010, concerning the classification of certain goods in the Combined Nomenclature, OJ (L214)(2018).

78 See section 4-1(2) of the *VAT Act of 19 June 2009 No 58* [unofficial English translation] <https://www.skatteetaten.no/globalassets/bedrift-og-organisasjon/avgifter/merverdiavgift/refusjon-av-mva---avgiftsinfo/vat-act---oversatt-versjon-av-merverdiavgiftsloven-updatet-may-2014.pdf>. Since Norway is not a member of the European Union, it is not bound by the VAT Directive but, as a member of the European Economic Area, its cross-border laws and regulations are closely aligned to those of the Union.

79 Nina Berglund, 'Ministry to Liberate Melgaard's Art', *News in English.no* (Web Page, 4 November 2016) <https://www.newsinenglish.no/2016/11/04/melgaards-art-halted-at-osl>.

80 Ibid.

81 Ibid.

C *Preliminary Conclusions*

As observed by Paul Kearns:

> '[c]ourts have tended to focus on the occupation of the person producing [the art piece], the purpose for which the object is made, and, if the object is editioned, like certain sculptures or prints, the method of execution or number of pieces in the series.'[82]

Kearns adds, 'in deciding what qualifies for art for the purpose of determining tariff rates or exemption as imports, the courts have nevertheless often focused heavily on the appearance of the object'.[83]

III CUSTOMS AND TAX LAW DEFINITIONS OF ARTWORKS

This part of the article is principally about drafters' attempts to exhaustively define artworks for customs or indirect purposes.[84] The example of the *Value Added Tax Act 1994* (UK) is used to demonstrate the difficulty or, perhaps, folly of this approach. Alternative approaches are also identified.

A *Exhaustive Positive Definitions*

A remarkable example of the legislature seeking to positively identify works of art is provided by the *Value Added Tax Act 1994* (UK) ('*VATA 1994*') which was enacted in order to comply with the European Union's VAT Directive ('VAT Directive').[85] The provision of the *VATA 1994* in question relates to imported artworks and is substantively the same as the Directive albeit more prolix, as English-heritage legislation tends to be.

In summary, section 21 of the *VATA 1994*:

> 'gives the general valuation rules. Subsection 4 sets out the method for arriving at a reduced valuation, to which the 17.5 per cent VAT rate is applied, to produce an effective import VAT rate of 5 per cent. Sub-sections 5 to 6D contain definitions of the goods that qualify to be taxed on a reduced value at importation, giving an effective VAT rate of 5 per cent.'[86]

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82 Kearns (n 51) 161.

83 Ibid 162.

84 HM Revenue and Customs, 'Internal Manual: Imports' (Web Page, 2020) <https://www.gov.uk/hmrc-internal-manuals/imports/imps05200>. In jurisdictions that are not governed by the rule of law, the state itself may simply determine whether or not an artefact or a performance constitutes art. See, for example, Taylor Dafoe, '"The Government Gets to Decide Who Is an Artist": Cuban Authorities Crack Down on Dissent as the Havana Biennial Opens', *ArtNet News* (Web Page, 16 April 2019) <https://news.artnet.com/art-world/havana-biennial-cuban-government-1519024>.

85 *Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax* (OJ L 347, 11.12.2006, p 1). I am grateful to David Massey for guidance on this issue — any errors are mine alone.

86 'Valuation for import VAT: Exceptions to the Normal Rules: Permanent Imports: Works of Art, Antiques and Collectors' Items' in HM Revenue and Customs (n 84).

VATA 1994 s 21(6)(g) includes:

> (g) any enamel on copper which –
>
> (i) was executed by hand;
>
> (ii) is signed either by the person who executed it or by someone on behalf of the studio where it was executed;
>
> (iii) either is the only one made from the design in question or is comprised in a limited edition; and
>
> (iv) is not comprised in an article of jewellery or an article of a kind produced by goldsmiths or silversmiths;

Section 21(6B)(c) further provides in relation to scarcity:

> in the case of enamels on copper –
>
> (i) the edition is limited so that the number produced from the same design does not exceed eight; and
>
> (ii) each of the enamels in the edition is numbered and is signed …

Why enamels on *copper*? Enamel can be applied to any stable base, including other metals — the *Gmurzynska-Bscher* case related to enamel on steel — and stone.[87] While the VAT Directive broadly follows the World Customs Union ('WCU'), the WCU is not so specific on what constitutes a work of art — certainly, enamels on copper are not specifically identified.

Enamelling metal has a long tradition in European artistic practice, and later, Chinese art[88] but underwent a particular surge of interest and development in the late Victorian era. Alexander Fisher (1864–1936) is generally considered to have been the master practitioner and explicator of enamelling at that time. In his canonical treatise,[89] Fisher explained different techniques for applying enamel to metals, with copper, given its inexpensiveness and relative inertness, being the most common, but not unique base. Of particular note, Fisher advised that practitioners of the ancient champlevé method (an alternative to the more popular cloisonné method) should not use pure copper but rather a 16:1 ratio of copper to zinc, in other words, a form of brass. If a non-insignificant amount of zinc is added to copper, technically, the metal becomes an alloy.[90] The meaning of copper itself is, therefore, contestable and might require officials to engage in a metallurgical investigation into the exact consistency of the base of the enamel work.

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87 For a discussion of the huge variety of enamel works, see Hugh Tait, 'Enamelwork', *Encyclopædia Britannica* (Web Page, 2016) <https://www.britannica.com/art/enamelwork>.

88 'Chinese Cloisonné', *Heilbrunn Timeline of Art History* (Web Page, 2004) <https://www.metmuseum.org/toah/hd/clos/hd_clos.htm>.

89 Alexander Fisher, *The Art of Enamelling Upon Metal* (Offices of "The Studio", 1906).

90 The usual definition of brass includes a copper to zinc ratio as low as 20:1. See 'Brass', *Encyclopædia Britannica* (Web Page, 2019) <https://www.britannica.com/technology/brass-alloy>.

B *Alternative Approaches*

In Australia, the *Resale Royalty Right for Visual Artists Act 2009* (Cth)[91] provides an extensive definition of 'artwork' but empowers the relevant Minister to declare other artefacts to be artworks for the purposes of the Act through regulation.[92] In contrast, section 995.1 of the *Income Tax Assessment Act 1997* (Cth) includes a broad definition of artwork but with no possibility of Ministerial extension.[93] Australia's Cultural Gifts Program for capital gains tax purposes leaves it to public collections to decide whether something is worth collecting — acceptable objects extend far beyond artworks.[94] In England, under the Arts Council England's Acceptance in Lieu scheme, a panel of experts determines whether an object is sufficiently 'pre-eminent' to be accepted instead of monetary settlement of inheritance tax.[95] The Canadian province of Québec provides tax concessions to closely defined artists,[96] whereas Ireland's Artists Tax Exemption permits an exemption from an artist's income tax, provided the relevant works are considered by the Revenue Commissioners to have cultural or artistic merit.[97]

C *Courts*

The *George Hensher* case, a House of Lords decision, provides a remarkable example of judicial dyspraxia when engaging with artistic quality, something that must be manifest in an artisanal work before it may attract copyright protection.[98] The five Law Lords presented separate judgments, each unpersuasive in their own ways, to decide that a suite of furniture did not have artistic quality.[99] William Cornish observes 'it took pages of

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91 The resale royalty right is not a tax (i.e. not an unrequited payment to government) but may be identified as a tax by economists.

92 See *Resale Royalty Right for Visual Artists Act 2009* (Cth) s 7.

93 An 'artwork' is '(a) a painting, sculpture, drawing, engraving or photograph; or (b) a reproduction of such a thing; or (c) property of a similar description or use.'

94 Australian Government, *Cultural Gifts Program Guide: Tax Incentives for Cultural Gifts to Australia's Public Collections* (2013).

95 'Acceptance in Lieu', Arts Council England (Web Page) <www.artscouncil.org.uk/tax-incentives/acceptance-lieu>. For examples of objects deemed sufficiently pre-eminent, see 'Cultural Gifts Scheme & Acceptance in Lieu Report 2017', *Arts Council England* (Report, 2018) <www.artscouncil.org.uk/sites/default/files/download-file/AIL-CSG%20201617%20Digital%20Annual%20Report.pdf>.

96 See section 7 of *Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters*, CQLR c S-32.01.

97 See *Taxes Consolidation Act 1997* (Ireland) s 195.

98 See *Copyright Act 1968* (Cth) s 10, definition of 'artistic work'; *Burge v Swarbrick* [2007] HCA 17 on the hull of a yacht not constituting an artistic work.

99 The quality of expert advice — as recorded in the case report, which incidentally includes an egregious spelling mistake — was patchy.

convoluted agony to say so, in essence the objects were judged to be of such tasteless designs as to be unsuited for the reception of their Lordships' stately fundaments'.[100]

The artist J C G Boggs, commenting on a judicial assessment of two artworks for copyright purposes, waspishly suggested that judges generally hold a preference for Victorian hunting prints.[101] Notwithstanding, it should be recalled that Justice Waite in *Brancusi* opened the door for recognition of abstract sculpture, and the tribunal in the *Haunch of Venison* case recognised Flavin's works as sculptures. Nevertheless, Justice Holmes's following dictum in *Bleistein v Donaldson Lithographic Co* is pertinent:

> It would be a dangerous undertaking for persons trained only to the law to constitute themselves as final judges of the worth of pictorial illustrations outside the narrowest and most obvious limits.[102]

On this point, *Bleistein* related to a copyright dispute that required the court to determine whether a poster was a substantial copy of another. That task appears more challenging than a basic importation question — is this thing a work of art that should be subject to a lower rate of duty? To this end, judges may play a common sense role for the community. For example, the state of New York provided sales tax concessions to promote the arts, including dramatic and musical arts performances. The tax administration refused to apply this concession to fees paid by customers to women to perform pole and lap dancing. While the dissenting judge was no doubt plausible in finding that freedom of expression (in its peculiar United States version) demanded neutral treatment of ballet and choreographed erotic dancing, in denying the concession, the majority almost certainly reflected common sense morality,[103] and therefore saved all branches of government from ridicule.

IV DISCUSSION

This part of the article establishes some fundamental principles for drafting taxing legislation, and then discusses those principles in relation to the problems of artworks identified so far.

A *Drafting Fundamentals*

Lon Fuller argued that legislation should manifest the following characteristics: generality; prospective operation; intelligibility and clarity; avoidance of contradictions;

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100 W R Cornish, 'Authors in Law' (1995) 58(1) *Modern Law Review* 1, 6 [fn omitted].

101 J S G Boggs, 'Who Owns This?' (1993) 68 *Chicago-Kent Law Review* 889. Honoré Daumier's caricatures of the legal fraternity might be closer to the mark. See also, Sergio Muñoz Sarmiento and Lauren van Haaften-Schick, '*Cariou v, Prince*: Toward a Theory of Aesthetic-Judicial Judgements' (2014) 1(4) *Texas A & M Law Review* 941.

102 [1903] 188 US 239 (US).

103 See 'Matter in 677 New Louden Corp v State of New York Tax Appeals Tribunal', *Justia US Law* (Web Page, 2019) <https://law.justia.com/cases/new-york/appellate-division-third-department/2011/2011-04787.html>.

avoidance of impossible demands; constancy through time; and congruence between official action and publication.[104] Despite Fuller's alternative characterisation of these rules as the 'procedural version of natural law' they are not ideological, and Herbert Hart plausibly characterised them as being 'essentially principles of good craftsmanship'.[105] Of Fuller's prescriptions, certainty in law is the quality traditionally considered the most important for taxation.[106] Indeed, there is a tendency to portray a special claim to certainty for tax laws: Adam Smith, for example, proposed that tax certainty is 'a matter of so great importance that a very considerable degree inequality … is not so near so great an evil as a very small degree of uncertainty'.[107]

Tax laws do not have any special claim to certainty. Retrospectivity, for example, is generally repugnant in any area of the law. The need for lawfulness should not provide a mask for conservatism, and, as Fuller observes: '[i]f every time a man relied on existing law in arranging his affairs, he were made secure against change in legal rules, the whole body of our law would be ossified forever'.[108] Likewise Lord Maitland, contemplating the doctrine of precedent, said: '[c]ertainty in law must not become certainty in injustice'.[109]

Oliver Wendell Holmes's characterisation of 'the law' as '[t]he prophecies of what the courts will do in fact, and nothing more pretentious' identifies the expectation of predictability that lies at the root of the rule of law.[110] For legislation, the possibility of prediction starts with the ability to understand the text. Opacity and ambiguity in legislative texts may provide both the collection agency and taxpayers with an excuse to interpret the law in their own favour.[111]

Why not hand over interpretation to experts? Roger Cotterrell observes:

> Although the law is reason, reason alone will not give mastery of it … Thus, obviously, actual knowledge of law is denied to the community. This knowledge is necessarily – by its nature – the monopoly of lawyers, who appear as the absolutely indispensable representatives of the community in stating, interpreting and applying the law.[112]

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104 Lon L Fuller, *The Morality of Law* (Yale University Press, rev ed, 1969) 42.

105 Cited by Wolfgang Friedman, *Law in a Changing Society* (Penguin, 2nd ed, 1972) 502 n 5.

106 Likewise, Carl S Shoup, *Public Finance* (Aldine, 1969) 23 includes certainty as an element of equal tax treatment because it assures individuals that they will be treated equally in successive periods should the same bundle of relevant circumstances recur.

107 Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations* (Encyclopaedia Britannica, 1952) 362.

108 Fuller (n 104) 60.

109 Cited by R W M Dias, *Jurisprudence* (Butterworths, 4th ed, 1976) 279.

110 Oliver Wendell Holmes, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457, 461.

111 Edward Wajsbrem, 'Taxation Reform: A New Agenda for the Nineties' (1992) 21 *Australian Tax Review* 140, 144.

112 Roger Cotterrell, *The Politics of Jurisprudence* (University of Pennsylvania Press, 1989) 34.

Internal morality does not uniquely demand clarity. Transparent governance implies the drafting of legislative texts in such a way that they are readily comprehensible to ordinary taxpayers and not merely a relatively small coterie of specialists.[113]

Provided the purpose and principles of a statute are adequately and concisely formulated, tax legislation may be drafted in a more accessible style than traditionally published. John Avery Jones, for instance, argued that traditionally prolix and complex, United Kingdom tax statutes could be recast in a way that follows the simpler European Union practice of formulating principles.[114] Brevity, is not, however, the principal concern. For example, when New Zealand rewrote its income tax legislation in plain English, the redrafted text became lengthier than the existing Act because the 'simplified' legislation incorporated diagrams, flowcharts, readers' notes and lists of definitions following provisions as interpretative aids.

B *Application to Artworks*

When interviewed about the Melgaard affair, Thorbjørn Jacobsen, Chief Operations Officer at Oslo Airport observed that '[t]he general public's definition of what constitutes art does not always mesh with the definition of art in the (state) regulations', which required an artwork to be made by the artist's hands.[115]

While the decisions of the administrative officials in relation to the imported works of Brâncuşi and others may seem to be those of philistines, the author submits they are often common-sensical and likely to reflect the views of the general community. While the author is not familiar with Melgaard's works, other than online,[116] the author has seen Brâncuşi's and Flavin's works in various galleries. Brâncuşi's sculptures are arguably some of the most beautiful artworks of the twentieth century.[117] However, it is understandable that customs officials at that time might have considered Brancusi's minimalist sculptures in packing crates to be part of something else, rather than constituting sculptures as traditionally conceived. The court disputation was not between

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113 Phillipe Nonet, 'Legal Competence' in C M Campbell and Paul Wiles (eds), *Law and Society* (Martin Robertson, 1979) 268 observes that although the aim of the legal order is that everyone should be equal before the law, notwithstanding their power, social standing or political leverage, the administration of law does not work in a vacuum. Cost and ignorance are considerable barriers.

114 John Avery Jones, 'Tax Law: Rules or Principles?' (1996) 17(3) *Fiscal Studies* 63.

115 Abrams (n 7). It has been commonly observed that law and regulation cannot keep pace with avant-garde art, but this is the first time the author has seen it proposed that the general public's conception of art outstrips that of the government.

116 Melgaard's works may be likened to the neo-Expressionist work of Jean-Michel Basquiat. See Justin Wolf, 'Neo-Expressionism Movement Overview and Analysis', *TheArtStory.org* (Web Page, 2020) <https://www.theartstory.org/movement/neo-expressionism>.

117 The same cannot be said of Oldenburg's or Melgaard's works which are intended to critique and challenge traditions and orthodoxy, including aesthetics. The author would place himself in Lord Reid's presumptive five percent of the population that has some knowledge of and does care about aesthetics (see below n 119), but, whereas Brâncuşi's works appeal to the authors' taste and Oldenburg's do not, the dutiability or taxation of their different artefacts cannot be based on such subjective considerations.

common-sensical customs officials and aestheticians; it was about the ontology of art, whether a sculpture must represent nature or merely suggest it or do nothing of the sort — surely an issue that should not be left to customs officials or judges?

In *George Hensher*,[118] Lord Reid observed: 'I doubt whether ninety-five per cent of the public know about aesthetics and care even less – to refer to aesthetics would restrict [a consideration of artistic quality] to cogniscenti (sic)'.[119] This statement may appear condescending, however the opinions of non-cognoscenti on concessions to artworks are important. Tax privileges granted to artworks may have infinitesimal direct economic impacts on those who do not enjoy them, but they should be justifiable as a deviation from the principle of equal treatment.

The ECJ's approach (what is the essence of a thing?) conceals prejudices; the query is really about what the particular bench of judges thinks the thing is. We live in a time of suspicion of expertise and connoisseurship,[120] a fact that partly explains popular reception of phenomena such as fake news and anti-vaccination disinformation. Courts therefore need to tread a careful line between deferring to expert opinion and recognising commonplace perceptions, especially on matters that defy scientific best evidence, such as the nature of art.

Class 97 of the CTT has an 'other' category for paintings and similar artefacts, but no residual category of 'other artworks'. If such a category existed, officials might feel less compelled to adjudge whether an artefact fits within a strictly defined category, and to take advice. The author doubts whether any senior customs or VAT official are unaware of the Brancusi, Haunch of Venison or Melgaard controversies and would not welcome the opportunity to defer to the advice of experts.

V CONCLUSION

Presenting an archetypal academic approach to the meaning of 'artwork' in relation to customs duties and indirect taxes, Kearns observes:

> Sadly, customs arts appraisal is frequently, but perhaps ineluctably, a step behind seemingly esoteric, particularly contemporary, definitions of art, not least because of the enduringly static nature of the guiding written legal policy or statute.[121]

To reiterate, knowledge of reported customs or indirect tax decisions are only known due to a dissatisfied importer appealing to a tribunal. Perhaps, numerous avant-garde artworks have not been shared across borders due to the conservative judgement of

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118 [1976] RPC 31.

119 Ibid 50. The 'this' in the quote refers to a consideration of whether an object was a work of artistic craftsmanship.

120 See Michael W Clune, 'Judgement and Equality' (2019) 45 *Critical Inquiry* 910; Jane Kallir, 'Art Authentication is not an Exact Science', *The Art Newspaper* (online, 23 November 2018) <www.theartnewspaper.com/comment/art-authentication-is-not-an-exact-science>; Sam Rose, 'The Fear of Aesthetics in Art and Literary Theory' (2017) 48(2) *New Literary History* 223.

121 Kearns (n 51) 162.

customs officials. However, this seems unlikely — it is more likely that the customs and VAT treatment of artworks greatly coincides with broadly-held conceptions of art.

The problem faced in the *Brancusi* case has not gone away and, perhaps, never will. The judgment of a customs official, who is unlikely to be trained in aesthetics, on whether an imported article is an artwork can be expected to provide a common-sensical perspective to the issue. Copyright law has not proved capable of accommodating avant-garde creations, such as Duchamp's *Fountain*; why should we expect tax and customs duty law to do so? Indeed, had customs officials been presented with an item of sanitary equipment with what would appear to be a graffito, but described in a consignment as an artwork, they would have been — and would still be — right to reject such a radical proposition.

Maurizio Cattelan, a prankster-artist, is noted for his asinine works, such as *America* (2016), a gold-plated, functioning toilet that was exhibited at the Guggenheim in New York but stolen from Blenheim Palace, Oxfordshire, and presumably (and mercifully) melted for its scrap value.[122] Cattelan's *Comedian* (2019) consists of a banana duct taped to a gallery wall. Interestingly, when another prankster-artist ate the banana, a substitute was exhibited in its place. If a customs official were to refuse to recognise a banana, a piece of duct tape, and instructions on how to adhere the banana, using the duct tape, to a gallery wall, as an artwork, they should have the full support of everyone, except admirers of the Emperor's new clothes. Cattelan is, of course, a provocateur who reasonably asks if *this* thing is art, why not *that* thing? Perhaps with regard to his works, a customs official or judge is better placed to answer that question than the trustees of the gallery who paid USD120,000 for a 'limited edition' of *Comedian*.[123]

REFERENCES

A *Articles/Books/Reports*

Boggs, J S G, 'Who Owns This?' (1993) 68 *Chicago-Kent Law Review* 889

Campbell, Erin J, 'Artisans, Artists and Intellectual' (2000) 23(4) *Art History* 622

Clune, Michael W, 'Judgement and Equality' (2019) 45 *Critical Inquiry* 910

Cornish, W R, 'Authors in Law' (1995) 58(1) *Modern Law Review* 1

Cotterrell, Roger, *The Politics of Jurisprudence* (University of Pennsylvania Press, 1989)

Culver, Stuart, 'Whistler v. Ruskin: The Courts, the Public and Modern Art' in Richard Burt (ed), *Administration of Aesthetics: Censorship, Political Criticism, and the Public Sphere* (University of Minnesota Press, 1994)

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122 See 'Maurizio Cattelan's Solid Gold Toilet was Stolen from a British Palace', *Artsy* (Web Page, 16 September 2019) <https://www.artsy.net/news/artsy-editorial-maurizio-cattelans-solid-gold-toilet-stolen-british-palace>.

123 See Graham Russell, 'Banana Artwork that Fetched $120,000 is Eaten by "Hungry" Artist', *The Guardian* (online, 8 December 2019) <https://www.theguardian.com/artanddesign/2019/dec/08/banana-artwork-that-fetched-120000-is-eaten-by-hungry-artist>.

Bert Demarsin, 'Qu'est-ce qu'une oeuvere d'art en droit de douane? Antholgie des manifestations perturbantes and des juges perturbés' in André Puttemans and Bert Demarsin (eds), *Les Aspects Juridiques de l'Art Contemporain* (Larcier, 2013)

Dias, R W M, *Jurisprudence* (Butterworths, 4th ed, 1976)

DuBoff, Leonard D, 'What Is Art – Toward a Legal Definition' (1990) 12 *Hastings Communications and Entertainment Law Journal* 303

DuBoff, Leonard D and Christy O King, *Art Law* (Thomson West, 4th ed, 2006)

Dutton, Denis, 'Aesthetic Universals' in Berys Gaut and Dominic McIver Lopes (eds), *The Routledge Companion to Aesthetics* (Routledge, 3rd ed, 2013)

Fichner-Rathus, Lois, *Understanding Art* (Cengage Learning, 2012)

Fisher, Alexander, *The Art of Enamelling Upon Metal* (Offices of "The Studio", 1906)

Fishman, James J, 'The Emergence of Art Law' (1977) 26 *Cleveland State University Law Review* 481

Friedman, Wolfgang, *Law in a Changing Society* (Penguin, 2nd ed, 1972)

Fuller, Lon L, *The Morality of Law* (Yale University Press, rev ed, 1969)

Goto, Kazuko, 'Why Do Governments Financially Support the Creative Industries' in Sigrid Hemels and Kazuko Goto (eds), *Tax Incentives for the Creative Industries* (Springer, 2017)

Hartshorne, Thomas L, 'Modernism on Trial: C. Brancusi v. United States (1928)' (1986) 20(1) *Journal of American Studies* 93

Hemels, Sigrid, 'Tax Incentives for the Art Market' in in Sigrid Hemels and Kazuko Goto (eds), *Tax Incentives for the Creative Industries* (Springer, 2017)

Holmes, Oliver Wendell, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457

Hughes, Robert, *The Shock of the New: Art and the Century of Change* (Thames & Hudson, 1990)

Jones, John Avery, 'Tax Law: Rules or Principles?' (1996) 17(3) *Fiscal Studies* 63

Kearns, Paul, *The Legal Concept of Art* (Hart, 1998)

Markellou, Marina P, 'Rejecting the Works of Dan Flavin and Bill Viola: Revisiting the Boundaries of Copyright Protection for Post-Modern Art' (2012) 2(2) *Queen Mary Journal of Intellectual Property* 175

McClean, Daniel and Armen Avenessian, 'Trials of the Title: The Trials of Brancusi and Veronese' in Daniel McClean (ed), *The Trials of Art* (Ridinghouse, 2007)

McClean, Daniel, '"I Would Prefer Not To" – The Legal Judgment of Art: The Trials of Brancusi v. United States (1928) and Haunch of Venison & Partners v. Her Majesty's Revenue & Customs (2008)' (2011) 38 *Propriétés Intellectuelles* 20

Merryman, John Henry, Albert E Elsen and Stephen K Urice, *Law, Ethics and the Visual Arts* (Wolters Kluwer, 5th ed, 2007)

Muñoz Sarmiento, Sergio and Lauren van Haaften-Schick, '*Cariou v, Prince*: Toward a Theory of Aesthetic-Judicial Judgements' (2014) 1(4) *Texas A & M Law Review* 941

Phillipe Nonet, 'Legal Competence' in C M Campbell and Paul Wiles (eds), *Law and Society* (Martin Robertson, 1979)

Rees, J F, *A Short Fiscal and Financial History of England 1815-1918* (Methuen, 1921)

Rose, Sam, 'The Fear of Aesthetics in Art and Literary Theory' (2017) 48(2) *New Literary History* 223

Segal, Joes, *Art and Politics: Between Purity and Propaganda* (Amsterdam University Press, 2016)

Shoup, Carl S, *Public Finance* (Aldine, 1969)

Smith, Adam, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Encyclopaedia Britannica, 1952)

Taussig, F W, 'The Tariff Act of 1922' (1922) 37(1) *Quarterly Journal of Economics* 1

Tischler, Rachel J, '"The Power to Tax Involves the Power to Destroy" How Avant-Garde Art Outstrips the Imagination of Regulators, and Why a Judicial Rubric Can Save It' (2012) 77(4) *Brooklyn Law Review* 1665

Wajsbrem, Edward, 'Taxation Reform: A New Agenda for the Nineties' (1992) 21 *Australian Tax Review* 140

Walterscheid, Edward C, 'To Promote the Progress of Science and Useful Arts: The Background and Origin of the Intellectual Property Clause of the United States Constitution' (1994) 2(1) *Journal of Intellectual Property Law* 1

Wittkower, Margot and Rudolf Wittkower, *Born Under Saturn – The Character and Conduct of Artists: A Documented History from Antiquity to the French Revolution* (W W Norton, 1963)

Wollheim, Richard, *Art and Its Objects* (Cambridge University Press, 2nd ed, 1980)

Woodmansee, Martha, *The Author, Art, and the Market: Rereading the History of Aesthetics* (Columbia University Press, 1994)

B *Cases*

Bleistein v Donaldson Lithographic Co [1903] 188 US 239 (US)

Brancusi v United States (1928) US Customs Court 3rd Div, N.209109-G

Burge v Swarbrick [2007] HCA 17

Develop Dr Eisbein GmbH & Co v Hauptzollamt Stuttgart-West (Case C-35/93)

Firma Farfalla Fleming und Partner v Hauptzollampt München-West [1990] ECR 1-3387

George Hensher Ltd v Restawhile Upholstery (Lancs) Ltd [1975] RPC 31

G Heilman Brewing Co v US 14 CIT 614 (CIT 1990)

Haunch of Venison Partners Ltd v Her Majesty's Commissioners of Revenue and Customs, London Tribunal Centre, released on 11 December 2008

Henkel KgaA v Holdfast New Zealand Ltd [2006] NZSC 102; [2007] 1 NZLR 577

Ingrid Raab v Hauptzollamt Berlin-Packhof C- 1/89 (13 December 1989)

Krystyna Gmurzynska-Bscher v Oberfinanzdirektion Köln (C-231/89) European Court of Justice <http://curia.europa.eu/juris/liste.jsf?language=en,T,F&num=231/89>

Mazer v Stein 347 US 201 (1954)

O O Friedlaender Co v US, 19 CCPA 198 (1931)

Reinhard Onnasch v Hauptzollamt Berlin-Packhof (C-155/84) European Court of Justice <http://curia.europa.eu>

United States v Olivotti & Co 7 Ct Cust App 46

United States v Perry 146 US (1892)

United States v Wannamaker 19 CCPA 229 (1931)

Volker Huber v Hauptzollamt Frankfurt am Main-Flughafen Case 291/87 (14 December 1988)

Westfälischer Kunstverein v Hauptzollamt Münster (C 23-77) [1977] ECR 1985

C *Legislation*

Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters, CQLR c S-32.01

Commission Regulation (EU) No 731/2010 of 11 August 2010

Copyright Act 1968 (Cth)

Copyright Act 1994 (NZ)

Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax (OJ L 347, 11.12.2006, p 1)

Resale Royalty Right for Visual Artists Act 2009 (Cth)

Tariff Act 1907 (NZ)

Tariff Act 1922 (US)

Tariff Act 1890 (US)

Taxes Consolidation Act 1997 (Ireland)

VAT Act of 19 June 2009 No 58 (Norway)

Value Added Tax Act 1994 (UK)

D *Treaties*

Common Custom Tariff, Council Regulation (EEC) No 3000/80 of 28 October 1980 and Council Regulation (EEC) No 3300/81 of 16 November 1981 amending

Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journals 1980 L 315, p 1, and 1981 L 335, p 1)

International Convention on the Harmonized Commodity Description and Coding System UNTS 1503 (p 3) 1 January 1988

E *Other*

Abrams, Amah-Rose, 'Bjarne Melgaard's Brush with Customs Officials Helps Change Outmoded Laws in Norway', *ArtNet News* (Web Page, 18 November 2016) <https://news.artnet.com/art-world/bjarne-melgaard-norway-customs-regulations-752051>

'Acceptance in Lieu', Arts Council England (Web Page) <www.artscouncil.org.uk/tax-incentives/acceptance-lieu>

Australian Government, *Cultural Gifts Program Guide: Tax Incentives for Cultural Gifts to Australia's Public Collections* (2013)

Berglund, Nina, 'Ministry to liberate Melgaard's art', *News in English.no* (Web Page, 4 November 2016) <https://www.newsinenglish.no/2016/11/04/melgaards-art-halted-at-osl>

'Brass', *Encyclopædia Britannica* (Web Page, 2019) <https://www.britannica.com/technology/brass-alloy>

'Chinese Cloisonné', *Heilbrunn Timeline of Art History* (Web Page, 2004) <https://www.metmuseum.org/toah/hd/clos/hd_clos.htm>

'Claes Oldenburg *Giant Soft Fan* 1966-67', *MoMA* (Web Page, 2019) <https://www.moma.org/collection/works/82053>

'Collection Online: Robert Mapplethorpe', *Guggenheim* (Web Page, 2019) <https://www.guggenheim.org/artwork/artist/robert-mapplethorpe>

'Constantin Brancusi, *Bird in Space*, c. 1941', *MoMA* (Web Page) <https://www.moma.org/collection/works/81503>

'Cultural Gifts Scheme & Acceptance in Lieu Report 2017', *Arts Council England* (Report, 2018) <www.artscouncil.org.uk/sites/default/files/download-file/AIL-CSG%20201617%20Digital%20Annual%20Report.pdf>

Dafoe, Taylor, '"The Government Gets to Decide Who Is an Artist": Cuban Authorities Crack Down on Dissent as the Havana Biennial Opens', *ArtNet News* (Web Page, 16 April 2019) <https://news.artnet.com/art-world/havana-biennial-cuban-government-1519024>

Dafoe, Taylor, 'The US Will Hit Chinese Art and Antiquities with an Additional 10 Percent Tariff Next Month as the Trade War Escalates', *The New York Times* (online, 15 August 2019) <https://news.artnet.com/market/chinese-art-antiquities-extra-tariff-1625869>

'Explanatory Notes to the Combined Nomenclature of the European Union (2006/C 50/01)', *European Parliament* (Report, 2006)

<http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/comitologie/info/2013/D026072-02/COM-AC_DI(2013)D026072-02_EN.pdf>

Garcia-Fenech, Giovanni, 'Benvenuto Cellini and the world's most spectacular salt cellar', *Artstor* (Web Page, 6 July 2016) <https://www.artstor.org/2016/07/06/benvenuto-cellini-and-the-worlds-most-spectacular-salt-cellar/>

'Harmonized Tariff Schedule (2019 Revision 16)', *US International Trade Commission* (Web Page, 2019) <https://hts.usitc.gov/>

HM Revenue and Customs, 'Internal Manual: Imports' (Web Page, 2020) <https://www.gov.uk/hmrc-internal-manuals/imports/imps05200>

'Impressionism and Post-Impressionism', *Oxford Art Online* (Web Page, 2019) <https://www.oxfordartonline.com/page/impressionism-and-post-impressionism/impressionism-and-postimpressionism>

Kallir, Jane, 'Art Authentication is not an Exact Science', *The Art Newspaper* (online, 23 November 2018) <www.theartnewspaper.com/comment/art-authentication-is-not-an-exact-science>

Lanza, Emily, 'Brancusi's Bird in Space: Is it a Bird or is it Art?', *The Legal Palette* (Web Page, 20 March 2018) <https://www.thelegalpalette.com/home/2018/3/20/brancusis-bird-in-space-is-it-a-bird-or-is-it-art>

'László Moholy-Nagy *EM 2 (Telephone Picture*) 1923', *MoMA* (Web Page, 2019) <https://www.moma.org/collection/works/78747>

'Marcel Duchamp Fountain 1917, replica 1964', *Tate* (Web Page) <https://www.tate.org.uk/art/artworks/duchamp-fountain-t07573>

Masuccihttp, Matias, 'Orson Welles Quotes Collection', *Independent Society* (Blog, 5 August 2013) <http://indso.com/orson-welles-quotes>

'Matter in 677 New Louden Corp v State of New York Tax Appeals Tribunal', *Justia US Law* (Web Page, 2019) <https://law.justia.com/cases/new-york/appellate-division-third-department/2011/2011-04787.html>

'Maurizio Cattelan's Solid Gold Toilet was Stolen from a British Palace', *Artsy* (Web Page, 16 September 2019) <https://www.artsy.net/news/artsy-editorial-maurizio-cattelans-solid-gold-toilet-stolen-british-palace>

'Robert Aitken', *SAAM* (Web Page) <https://americanart.si.edu/artist/robert-aitken-40>

Russell, Graham, 'Banana Artwork that Fetched $120,000 is Eaten by "Hungry" Artist', *The Guardian* (online, 8 December 2019) <https://www.theguardian.com/artanddesign/2019/dec/08/banana-artwork-that-fetched-120000-is-eaten-by-hungry-artist>

Sala, Christina, 'The Definition of Art in the Customs Law' (Working Papers Series International Trade Law, Istituto Universitario di Studi Europei, 2014)

Tait, Hugh, 'Enamelwork', *Encyclopædia Britannica* (Web Page, 2016) <https://www.britannica.com/art/enamelwork>

Thackera, Tess, 'How the 1913 Armory Show Dispelled the American Belief that Good Art Had to Be Beautiful', *Artsy* (Web Page, 6 March 2018) <https://www.artsy.net/article/artsy-editorial-1913-armory-dispelled-belief-good-art-beautiful>

'Thomas Hudson Jones', *Society of the Honor Guard, Tomb of the Unknown Soldier* (Web Page, 10 June 2014) <https://tombguard.org/column/2014/06/thomas-hudson-jones>

Valentin, Pierre, 'UK: The European Commission Says It's Not Art', *Mondaq* (Web Page, 20 June 2011) <http://www.mondaq.com/uk/x/135086/Music+and+the+Arts/The+European+Commission+Says+Its+Not+Art>

Wolf, Justin, 'Neo-Expressionism Movement Overview and Analysis', *TheArtStory.org* (Web Page, 2020) <https://www.theartstory.org/movement/neo-expressionism>

TRENDING TOWARDS CONVERGENCE

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ABSTRACT

This paper considers the operation of general anti-avoidance rules ('GAARs') in similar common law jurisdictions such as Australia, New Zealand, Canada and the United Kingdom to ascertain whether there has been a noted trend of convergence in the way these GAARs operate.

This paper concludes that there has been a noted trend towards convergence as it now appears to be the case that, no matter what the specific wording of the GAAR actually is, the enquiry undertaken by the courts in common law jurisdictions is effectively the same. Relevantly, this enquiry looks to the overall purpose and structure of the transactions at issue and whether they lack any real commercial substance. This conclusion may seem contrary to prevailing attitudes about statutory interpretation, however, the evidence reveals that no matter what specific wording might be adopted in the GAAR, the identification of tax avoidance as involving artificially contrived, complex arrangements that produce no real economic substance, is applied in almost the exact same way across the different jurisdictions reviewed.

This trend towards convergence indicates that the reviewed GAARs operate in largely the same ways. It is, however, acknowledged that whilst the enquiry undertaken is generally the same across the different jurisdictions examined, there are, nevertheless, differences in the outcomes possible due to different thresholds being applied to determine where the line of artificiality and tax avoidance is deemed to exist.

Keywords: convergence, general anti-avoidance rules

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I INTRODUCTION

Many jurisdictions have implemented general anti-avoidance rules ('GAAR' or 'GAARs') which are embedded within the tax laws to disallow or negate any benefit that might be derived by an entity engaging in a tax avoidance scheme. Accordingly, this paper aims to determine how the GAARs in four different jurisdictions — Australia, New Zealand, Canada and the United Kingdom ('UK') — currently operate and whether there is a trend towards convergence in the operation of these GAARs.

The four chosen jurisdictions all share a similar common law heritage and therefore have similar legal approaches and traditions. Each of these jurisdictions, with the exception of the UK, have had statutory GAARs for many years. Indeed, in the case of Australia, New Zealand and Canada, the respective GAARs have been largely unchanged since at least the 1980s.[1] The UK introduced its first legislative GAAR effective only from 17 July 2013.[2]

This paper aims to consider and compare the legislative wording of the various GAARs and some 'key' cases within each jurisdiction that have sought to clarify the operation of each respective GAAR.

Against this background, Part I explores the need for a statutory GAAR to contextualise the paper. Part III proceeds to explore in some detail the elements required in each GAAR examined. Part IV then outlines some outcomes following the analysis conducted in Part III prior to concluding in Part V. A summary is also provided in Part VI.

II NEED FOR A STATUTORY GAAR

A GAAR essentially contains a set of principles to enforce both the spirit and letter of the law, by operating to close loopholes in respect of any transaction 'where the economic substance is different from that reported to tax authorities'.[3]

Freedman observed that '[i]n the real world, no legislation, however detailed, can cover every issue that might arise. In fact, having excessive details in legislation often increases the opportunities for planning or avoidance.'[4] Accordingly, the rationale for the presence of a statutory GAAR is that it is not possible for the legislature to keep pace with new tax avoidance schemes and because — by its nature (being a general rule) — a GAAR is broad

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1 The New Zealand general anti-avoidance rules ('GAAR' or 'GAARs') are found in *Income Tax Act 2007* (NZ) ss BG 1, GA 1, YA 1 ('*ITA 2007*') and have applied virtually unchanged since 1974. Australia's GAAR is found in Part IVA of the *Income Tax Assessment Act 1936* (Cth) ('*ITAA 1936*') which has applied since 1981, and Canada's GAAR is found in section 245 of the *Income Tax Act 1985* (Canada) ('*ITA 1985*') and has applied since 1985.

2 First announced by HM Treasury, *2012 Budget*, House of Commons (HC 1853, 21 March 2012) [1.194] and then legislated in Part 5 of the *Finance Act 2013* (UK) ('*FA 2013*').

3 David Fernandes and Kerrie Sadiq, 'A Principled Framework for Assessing General Anti-Avoidance Regimes' [2016] 2 *British Tax Review* 172, 174.

4 Judith Freedman, 'Designing a General Anti-Abuse Rule: Striking a Balance' (Research Paper No 53/2014, University of Oxford Legal Research Paper Series, August 2014) 168.

in its operation, this makes it more effective than detailed rules. Therefore, the GAAR can operate more flexibly and apply to a wider range of arrangements.

Cooper stated that a GAAR is a necessary tool to try to render ineffective, arrangements that Parliament cannot foresee nor delineate.[5] This same point was made by the Canadian Supreme Court when it was noted that, when the Canadian revenue authorities seek to apply the GAAR to a factual matter, the revenue authority is effectively conceding that the words of the Act are inadequate to address the perceived misuse or abuse.[6]

Therefore, it can be said that the objective of a statutory GAAR is to defeat arrangements designed to counter legislative intentions and policies, as expressed in the wording of tax legislation.[7] A GAAR can also be said to have both a corrective role (to adjust liability where the ordinary tax provisions have failed to do so) and a supportive role (to ensure the proper and intended operation of the legislative taxation provisions). Arguably, a GAAR has advantages over specific anti-avoidance provisions ('SAAPs'), which are distinctly reactive in nature given that SAAPs are legislated after the event — or in recognition of an abusive tax practice — and are therefore, by definition, a legislative response to a narrow range of unacceptable particular arrangements. A GAAR can also provide for an 'umbrella effect' against 'future rainy days'; and by being broad in its operation, a GAAR can arguably also protect against new and distinctive schemes in the future.[8]

III HOW A GAAR WORKS

For a GAAR to apply, it must first be shown that there was some transaction, scheme or arrangement undertaken by the taxpayer. While the different jurisdictions reviewed in this paper use different wording in this aspect, it will be shown that, ultimately, they all have the same effect. For instance, Australia uses the term 'scheme', New Zealand adopts 'arrangement' and Canada uses 'transaction'.[9] Meanwhile, the United Kingdom uses the term 'tax arrangement'.[10]

After establishing this first element, the second element requires that a tax benefit of some kind must be obtained in connection with the scheme, arrangement or transaction. This

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5 Graeme S Cooper, 'The Role and Meaning of "Purpose" in Statutory GAARs' (Research Paper No 16/22, Sydney Law School Legal Studies, March 2016) 4.

6 *Copthorne Holding Ltd v Canada* 2009 FCA 163, [109] ('*Copthorne*').

7 Nabil Orow, *General Anti-Avoidance Rules: A Comparative International Analysis* (Jordans, 2000) 58.

8 Stephen Barkoczy, 'The GST General Anti-Avoidance Provisions – Part IVA with a GST Twist' (2000) 3(1) *Journal of Australian Taxation* 35, 37.

9 'Scheme' as defined in *ITAA 1936* (n 1) s 177A; 'tax avoidance arrangement' as defined in *ITA 2007* (n 1) ss BG 1(1), YA 1; 'avoidance transaction' as defined in *ITA 1985* (n 1) s 245(3), where an avoidance transaction constitutes an arrangement or event.

10 *FA 2013* (n 2) s 207.

second element of a GAAR requires that the 'scheme', 'arrangement' or 'transaction', as identified, produces the 'tax benefit'.

The third element of a GAAR requires that the taxpayer, when viewed objectively, entered into or carried out the scheme, arrangement or transaction, mainly, or at least not incidentally, for a requisite tax avoidance purpose.

How each of these three elements operates across the different jurisdictions considered will be discussed in more detail, with the stated emphasis concerning the wording of the legislative provisions. Accordingly, each element will be discussed, in turn, below. It is important to note that the structure of the analysis conducted within each sub-part starts by analysing the law as it applies in Australia, then New Zealand, Canada and the UK before comparing each jurisdiction at the end.

A *First Element: Scheme, Arrangement or Transaction*

In each of the jurisdictions considered, the concept of a 'scheme', 'arrangement' or 'transaction' is purposely defined extremely broadly so as not to enable a taxpayer to avoid the GAAR on the basis of any particular form of dealing. Being general in its nature, a GAAR does not specifically try to distinguish between prohibited and acceptable conduct. How broadly or narrowly an arrangement is defined — in the sense of what steps are included in the definition of the 'scheme', 'arrangement' or 'transaction' — is critical to the operation of a GAAR.

The broader the definition applied to this first element (and hence, the wider its meaning is), the more likely that an overall non-tax purpose will be found. Conversely, the narrower the definition applied to this first element (and hence, the narrower the scheme, arrangement or transaction is taken to be), the more likely that a tax avoidance purpose will be found. This has proved to be the result in numerous GAAR cases such as *Commissioner of Taxation v Hart*[11] ('*Hart*') and many others.

1 *'Scheme' under the Australian GAAR*

The Australian GAAR, contained in section 177A of the *Income Tax Assessment Act 1936* (Cth) ('*ITAA 1936*'), defines the term 'scheme' in very broad language as:

> (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
>
> (b) any scheme, plan, proposal, action, course of action or course of conduct.

Due to this broad definition of 'scheme' in *ITAA 1936* s 177A(1), arguably almost any activity — even if carried out by one party only — would appear to amount to a 'scheme'.

[11] (2004) 217 CLR 216 ('*Hart*').

2 *'Arrangement' under the New Zealand GAAR*

The main operative provision of the New Zealand GAAR is found in section BG 1 of the *Income Tax Act 2007* (NZ) ('*ITA 2007*'), which provides that 'a tax avoidance arrangement is void against the Commissioner [of Inland Revenue] for income tax purposes'.[12] Section BG 1(2) provides that the Commissioner may counteract a tax advantage obtained by a person from a tax avoidance arrangement.

The term 'arrangement' is defined as 'any agreement, contract, plan or understanding (whether enforceable or unenforceable), including all steps and transactions by which it is carried into effect.'[13] The words 'arrangement', 'plan' or 'understanding' are each broad enough to seemingly cover all kinds of actions by which persons may arrange their affairs for a particular purpose, or for a particular effect.

3 *'Avoidance Transaction' under the Canadian GAAR*

The first element of the Canadian GAAR requires the transaction to be an avoidance transaction. Section 245(3) of the *Income Tax Act 1985* (Canada) ('*ITA 1985*') provides that an 'avoidance transaction' includes an arrangement or event and any part of a series of transactions that results directly or indirectly in a tax benefit. This is the case unless the transaction may be reasonably considered to have been undertaken for bona fide purposes, other than to obtain the tax benefit.[14]

4 *'Tax Arrangement' under the UK GAAR*

The term 'tax arrangement' is defined in subsection 207(1) of the *Finance Act 2013* (UK) ('*FA 2013*') as an arrangement:

> If, having regard to all circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.[15]

The 'tax arrangement' will be regarded as abusive if:

> in entering into or carrying out the transaction it cannot reasonably be regarded as a reasonable course of action in relation to the relevant provisions, having regard to all the circumstances including:
>
> (a) Whether the substantive results of the arrangements are consistent with any principles on which those provisions are based (whether express or implied) and the policy objectives of those provisions;
>
> (b) Whether the means of achieving those results involves one or more contrived or abnormal steps; and

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12 *ITA 2007* (n 1) s BG 1.

13 Ibid s OB 1.

14 *ITA 1985* (n 1) s 245(3). Not unlike the approach taken under the Australian GAAR.

15 *FA 2013* (n 2) s 207(1).

(c) Whether the arrangements are intended to exploit any shortcomings in those provisions.[16]

In sub-section 207(4) of the *FA 2013*, examples are given of arrangements that might be viewed as abusive:

(a) if the arrangements result in an amount of income, profits or gains for tax purposes that is significantly less than the amount for economic purposes, or

(b) If the arrangements result in deductions or losses of an amount for tax purposes that is significantly greater than the amount for economic purposes, or

(c) The arrangements result in a claim for the repayment or crediting of tax (including foreign tax) that has not been, and is unlikely to be, paid.

Sub-section 207(5) of the *FA 2013* provides that the fact that the tax arrangements accord with established practice, and if Her Majesty's Revenue and Customs ('HMRC') had, at the time the arrangements were entered into, indicated its acceptance of that practice, then this would be an example of something which might indicate that the arrangements are not abusive.

Therefore, it is clear that the UK GAAR regards a tax arrangement as an arrangement that has obtained a tax advantage as the main, or one of the main purposes, of the arrangement. The HMRC has stated that an arrangement can be viewed in broad terms where, for example, the overall transaction may have a commercial purpose, but steps are inserted into the arrangement which have, as their only purpose, a tax saving purpose.[17] Regardless of this view by the HMRC, section 207(3) of the *FA 2013* provides that 'where the tax arrangements form part of any other arrangements regard must also be had to those other arrangements'.

5 *Comparing the First Element*

Although different terms are used, each of the GAARs has the same purpose (to counter artificial tax practices that defeat the intention of the relevant legislation), and each start by the same process of identifying a relevant scheme, arrangement or transaction.

This process to identify the scheme, arrangement or transaction that was entered into by the taxpayer is largely the same across the jurisdictions reviewed, suggesting that despite the differences in wording present, there is a trend towards convergence in the way that different GAARs are applied.

B *Second Element: Tax Advantage of Some Kind*

The second element in the application of a GAAR is that a tax benefit of some kind must be obtained in connection with the scheme, arrangement or transaction.

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16 Ibid s 207(2).

17 Her Majesty's Revenue and Customs, *HMRC's GAAR Guidance* (2013) [C4.3] ('*HMRC GAAR Guidance*').

1 *'Tax Benefit' under the Australian GAAR*

Under the Australian GAAR, section 177C of the *ITAA 1936* defines the kind of tax outcomes that a participant in a scheme must have had in connection with the scheme. Accordingly, it provides that a tax benefit can arise due to: an amount not being included in assessable income; a deduction being allowed which should not be; a capital loss being incurred; or a foreign income tax offset being allowed.[18]

2 *'Tax Advantage' under the New Zealand GAAR*

Following on from *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue*[19] ('*Ben Nevis*'), there is now strong authority that there is a link between the concept of a 'tax advantage' and the manner in which the tax benefit is obtained outside of Parliament's contemplation.[20]

The term 'tax advantage' is defined under section YA 1 of the *ITA 2007* in very broad terms to include, directly or indirectly, the altering of the incidence of income tax, or avoiding, reducing or postponing any liability to income tax. This very broad definition of 'tax advantage' could, of course, include every possible reduction in tax but nevertheless, New Zealand courts generally do not require any comparison to be drawn between two or more possible courses of action.[21]

Indeed, in *Ben Nevis,* the New Zealand Supreme Court held that once an arrangement is identified, the burden is on the taxpayer to show that the arrangement was not a tax avoidance transaction.[22] Despite this, the court cited with approval *Commissioner of Inland Revenue v BNZ Investments Ltd*[23] ('*BNZ Investments*') where it had been stated that 'something more than the existence of a tax benefit in one hypothetical situation compared with another is required to justify [the application of the GAAR]'.[24] The comments in *BNZ Investments* therefore suggest that the identification of a tax benefit, when compared to a hypothetical state of affairs, is a necessary pre-condition to the application of a GAAR in New Zealand (but not enough in itself for the GAAR to apply).

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18 See *ITAA 1936* (n 1) s 177C.

19 [2009] 2 NZLR 289 ('*Ben Nevis*').

20 Ibid 333.

21 An issue noted by New Zealand courts almost half a century ago in *Elmiger v Commissioner of Inland Revenue* [1966] NZLR 683, 686 (per Woodhouse J).

22 *Ben Nevis* (n 19) 333.

23 [2002] 1 NZLR 450.

24 *Ben Nevis* (n 19) 328 citing *Commissioner of Inland Revenue v BNZ Investments Ltd* [2002] 1 NZLR 450, 463.

3 *'Tax Benefit' under the Canadian GAAR*

The *ITA 1985* defines 'tax benefit' as 'a reduction, avoidance or deferral of tax or other amount payable under the Act or an increase in a refund of tax under the Act from a transaction or series of transactions'.[25]

Where the reduction of taxable income is not an issue, a tax benefit can be determined by reference to an alternative arrangement that the taxpayer could have carried out.

In *Canada Trustco Mortgage Company v Canada*[26] ('*Canada Trustco*'), it was noted that 'the existence of a tax benefit might only be established upon a comparison between alternative arrangements'[27] and since these could not be found on the facts, as the taxpayer had not previously derived the same type of income (the case involved leasing income), the GAAR did not apply.[28] Nevertheless, the court noted that the threshold for the existence of a tax benefit is not particularly high.[29]

In *Univar Canada Ltd v R*,[30] it was noted that this comparison must be made to the alternative transaction that the taxpayer may have actually entered into, even if this alternative transaction amounts to nothing.[31] In *Copthorne Holdings Ltd v Canada*[32] ('*Copthorne*'), it was noted that the tax benefit test attempts to isolate the effect of the tax benefit from the non-tax purpose of the taxpayer.[33] A transaction will not be regarded as comparable if it is 'theoretically possible, but, practically speaking, unlikely in the circumstances'.[34] In the case of *OSFC Holdings Ltd v The Queen*[35] ('*OSFC Holdings Ltd*')the court made it clear that it is not a requirement that the tax benefit has to be enjoyed by the party entering into the avoidance transactions.[36]

4 *'Tax Advantage' under the UK GAAR*

A 'tax advantage' has to be obtained from the tax arrangement for the UK GAAR to apply. Section 207(4) of the *FA 2013* outlines the types of tax advantages that can be obtained, but in section 207(6) of the *FA 2013*, this list is not intended to be viewed as exhaustive.

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25 *ITA 1985* (n 1) s 245(1)

26 [2005] 2 SCR 601 ('*Canada Trustco*').

27 Ibid 613 [20].

28 Ibid.

29 Ibid 625 [55].

30 2005 DTC 1478.

31 Ibid. The *Univar* case involved a complex series of transactions involving subsidiary companies within a group of companies which exploited Canada's foreign income exemption system.

32 [2011] 3 SCR 721.

33 Ibid [70]–[71].

34 *Canadian Pacific Ltd v The Queen* 2000 CanLII 265, [12].

35 2001 DTC 5471 ('*OSFC Holdings Ltd*').

36 Ibid.

The UK GAAR does refer the tax benefit to the counterfactual involved and that this involves a comparison to an alternative transaction.[37] The UK legislation provides, however, that this counterfactual must be just and reasonable, and that the alternative transaction does not necessarily have to be the one which results in the highest tax charge.[38]

5 *Comparing the Second Element*

The term 'tax benefit' is defined to mean the tax advantage obtained from the scheme, arrangement or transaction. Australia and Canada both refer to the term 'tax benefit' whereas New Zealand refers to 'tax avoidance'.[39] The UK GAAR uses the term 'tax advantage'.

The Canadian GAAR, in section 245 of the *ITA 1985*, does not refer directly to any alternative counterfactual, yet the concept of a tax benefit implies that there does need to be a comparison between two or more states of affairs, where one produces a more favourable tax outcome. Indeed, the Canadian Tax Court — in one of the first GAAR cases to come before it — identified that, in calculating a tax benefit, there must be a norm or standard against which the reduction or avoidance can be measured.[40] Further, in a more recent case, the Canadian Supreme Court held that in order to determine a tax benefit, it is appropriate to compare the transaction to what 'might reasonably have been carried out but for the existence of the tax benefit'.[41]

Under the New Zealand legislation, per section YA 1 of the *ITA 2007*, the term 'tax avoidance' is defined in very broad terms to include directly or indirectly altering the incidence of income tax, or avoiding, reducing or postponing any liability to income tax. New Zealand courts do not generally require any comparison to be drawn between two or more possible courses of action.

Although there are what may seemingly be perceived as minor different approaches in how this 'tax benefit' is identified, ultimately the same type of tax advantage is assessed across all of the jurisdictions reviewed. In any event, the author contends that there is no real practical difference in these terms, as the terms are defined in such broad terms to ensure that any arrangement (that reduces tax payable or provides a timing tax advantage) can potentially be caught by the GAAR. As such, the aim of a GAAR — no matter what its specific wording is — seems to be to ensure that all forms of tax benefit, whether acceptable or not, are potentially caught. This similar approach in how the 'tax benefit' is determined also points towards a convergence in the way the different GAARs are applied.

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37 Graham Aaronson, *GAAR Study: A Study to Consider Whether a General Anti-Avoidance Rule Should be Introduced into the UK Tax System* (Report, 2011) 36 [5.35] ('Aaronson Report').

38 Freedman (n 4) 171.

39 *ITA 2007* (n 1) s YA 1.

40 *McNichol v The Queen* (1997) 97 DTC 111, 119.

41 *Copthorne* (n 32) citing David Duff et al, *Canadian Income Tax Law* (Lexis Nexis, 3rd ed, 2009) 187.

C *Purpose of Tax Avoidance: The Third Element of a GAAR*

The third element in the application of a GAAR is that the scheme, arrangement or transaction was entered into for some particular purpose.

1 *The Australian GAAR: Sole or Dominant Purpose of Tax Avoidance*

The Australian GAAR will only apply to a taxpayer if the taxpayer, or other persons who participated in the scheme, entered into or carried out the scheme for the sole or dominant purpose of obtaining the tax benefit.

This purpose of the taxpayer is determined objectively and is based on applying *ITAA 1936* s 177D(2), which lists eight different factors that must be considered in determining what the purpose of the taxpayer was in entering into or carrying out the scheme.

Section 177D(2) of the *ITAA 1936* also requires an analysis of how the scheme was implemented, what the scheme actually achieved as a matter of substance or reality (as distinct from legal form), and the nature of any connection between the taxpayer and other parties.

These eight factors, which were included in *ITAA 1936* ss 177D(b)(i)–(viii), are now (as a result of 2012–2013 amendments) included in subsection 177D(2) of the *ITAA 1936*.[42] Relevantly, these eight factors are:

1) The manner in which the scheme was entered into or carried out;
2) The form and substance of the scheme;
3) The time at which the scheme was entered into and the length of the period during which the scheme was carried out;
4) The result that, but for Part IVA, would be achieved by the scheme;
5) Any change in the financial position of any person, who has any connection (whether of a business, family or other nature) with the relevant taxpayer due to the scheme;
6) Any consequences for the relevant taxpayer or other connected person of the scheme having been entered into or carried out;
7) The nature of the connection (whether of a business, family or other nature) between the relevant taxpayer and that other connected person; and
8) Any changes in the financial position of the taxpayer.[43]

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[42] This change was made by the *Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Act 2013* (Cth).

[43] Within *ITAA 1936* (n 1) pt IVA, there is no definition of the meaning of any of these factors, nor was there any commentary in the original Explanatory Memorandum, Income Tax Laws Amendment Bill (No 2) 1981 (Cth) to assist in understanding their exact meaning.

2 *Purpose under the New Zealand GAAR*

'Tax avoidance' is defined in the *ITA 2007* as including any arrangement that:

(a) directly or indirectly alters the incidence of any income tax;

(b) directly or indirectly relieves a person from a liability to pay income tax or from the potential or prospective liability to pay any future income tax;

(c) directly or indirectly avoids, postpones or reduces any liability to income tax or any potential or prospective liability to future income tax.[44]

The term 'tax avoidance arrangement' is then further defined as follows:

> Tax avoidance arrangement means an arrangement, whether entered into by the person affected by the arrangement or any other person, that directly or indirectly
>
> (a) has tax avoidance as its purpose or effect; or
>
> (b) has tax avoidance as its purpose or effect or has tax avoidance as one of its purposes or effects, whether or not any other purpose or effect is referable to ordinary business or family dealings, if the tax avoidance purpose or effect is not merely incidental.[45]

Therefore, the New Zealand GAAR, in *ITA 2007* s BG 1(1), applies to all arrangements that directly or indirectly have tax avoidance as their purpose or effect, or one of their purposes or effects, or where that purpose or effect is not merely incidental. In *Challenge Corporation Ltd v Commissioner of Inland Revenue*,[46] President Woodhouse held that 'not merely incidental' meant 'something which is necessarily linked and without contrivance to some other purpose or effect so that it can be regarded as a natural concomitant'[47] and 'that this will be a question of fact and degree in each case.'[48]

3 *Purpose under the Canadian GAAR*

The *ITA 1985* relevantly provides that:

> The GAAR applies to a transaction only if it may reasonably be considered that the transaction:
>
> (a) Would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of
>
> (i) This Act, the Income Tax Regulations,
>
> (ii) The Income Tax Application Rules,
>
> (iii) A tax treaty, or

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44 *ITA 2007* (n 1) s YA 1.

45 Ibid.

46 [1986] 2 NZLR 513.

47 Ibid 533.

48 Ibid.

(iv) Any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation; or

(b) Would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.[49]

In applying the Canadian GAAR, the court is required to look to whether the avoidance transaction amounts to a misuse or abuse of the *ITA 1985*. In determining this, the Canadian Supreme Court has stated in *Canada Trustco,* that it must first be determined whether the avoidance transaction was undertaken or arranged primarily for 'bona fide purposes' other than securing tax benefits.[50]

To determine whether the taxpayer had bona fide non-tax reasons in entering into the transaction, the primary purpose of the transaction entered into is considered. If that primary purpose — after weighing up all the relevant tax and non-tax purposes — is mainly for tax reasons, then the transaction may be voided. The term 'bona fide' means that the non-tax purpose must be real and not contrived to create an impression of a non-tax purpose. If the main purpose of the transaction was determined to be for a bona fide non-tax purpose, then the focus of the enquiry shifts on whether it may reasonably be considered that the transaction would result in a misuse of the provisions of the *ITA 1985* or an abuse having regard to the provisions of the *ITA 1985* read as a whole.

Therefore, it appears that even if tax is a significant, but not the main purpose of the transaction, then the transaction will not be caught by *ITA 1985* s 245. Section 245(4) of the *ITA 1985* is sometimes referred to as the 'object and spirit' rule and accordingly, if the transaction does not result in a misuse of the provisions of the *ITA 1985* or an abuse when considering the *ITA 1985* as a whole, then the GAAR does not apply.

Section 245 of the *ITA 1985* applies a step transaction approach similar to that taken by the judiciary in England in the *WT Ramsay Ltd*[51] case. As such, each step in the transaction or series of transactions, must be carried out primarily for bona fide non-tax purposes. The use of the term 'reasonable' in *ITA 1985* s 245(4) indicates that the enquiry regarding purpose is an objective one.[52] In *OSFC Holdings Ltd,* the court stated that the tax purpose test is an objective test and any subjective intentions of the taxpayer would not be given much weight.[53]

According to Hogg, Magee and Li, there are certain factors that are considered useful in determining the objective purpose. Relevantly, these are:

1. comparing the tax avoided and the commercial or non-tax benefits;

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49 *ITA 1985* (n 1) s 245(4).

50 *Canada Trustco* (n 26) 619 [44].

51 [1982] AC 300 (House of Lords).

52 Peter W Hogg, Joanne E Magee and Jinyan Li, *Principles of Canadian Income Tax Law* (Carswell, 7th ed, 2010) 682.

53 See generally, *OSFC Holdings Ltd* (n 35).

2. the lifespan of the arrangements in the transaction;
3. the dominance of tax purpose over other non-tax purposes; and
4. the election of one particular transaction over another.[54]

In regard to this last point, choosing the most tax-efficient method does not necessarily mean that the transaction is an avoidance transaction.[55] Although ultimately no abuse or misuse was found in *Canada Trustco,* the Supreme Court noted that the term 'abuse' was broad enough to encompass 'misuse'.[56] The Canadian Supreme Court has also stated that it was not possible to abuse the *ITA 1985* as a whole without also misusing the specific provisions of the *ITA 1985*, and that therefore, there is a single enquiry required into whether the provisions have been misused or the *ITA 1985* has been abused having regard to the *ITA 1985* as a whole.

The misuse and abuse analysis ultimately hinges upon a purposive interpretation with courts applying the GAAR based on 'their perceptions of policy in the relevant provisions of the Act through a process of reasoned elaboration.' [57]

Given that words have different meanings in different contexts, determining policy can be an incredibly difficult exercise, but ultimately the application of the GAAR is almost entirely fact-driven.[58] Cassidy has noted that this misuse and abuse test is the major issue that Canadian courts have addressed when determining whether the GAAR applies to any given transaction or arrangement.[59] The application of the abuse and misuse test — and the reasonably considered exception — has meant that Canadian jurisprudence has thereby sought to limit the operation of the GAAR to only clearly abusive transactions.

Accordingly, in summary, three conditions must be satisfied before section 245 of the *ITA 1985* can be applied:

1. There must be an avoidance transaction;
2. A tax benefit must arise from the avoidance transaction; and
3. The avoidance transaction must be abusive and therefore, directly or indirectly result in the misuse or abuse of any provision of the *ITA 1985*.

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54 Hogg, Magee and Li (n 52).

55 Ibid 684. These factors echo those found in other GAARs such as the Australian GAAR contained in *ITAA 1936* (n 1) s 177D(b).

56 *Canada Trustco* (n 26) 619 [38], [39].

57 Pooja Samtani and Justin Kutyan, 'GAAR Revisited: From Instinctive Reaction to Intellectual Rigour' (2014) 62(2) *Canadian Tax Journal* 401, 407.

58 Ibid.

59 Julie Cassidy, 'To GAAR or not to GAAR – That is the Question: Canadian and Australian Attempts to Combat Tax Avoidance' (2005) 36(2) *Ottawa Law Review* 259, 312–313 ('To GAAR or not to GAAR').

Section 246 of the *ITA 1985* provides that a tax benefit will not be found to be subject to the Canadian GAAR in any transaction if the transaction meets the following four conditions:

(a) was entered into at arm's length;

(b) is bona fide;

(c) is not pursuant to or part of any other transaction; and

(d) did not affect the payment or partial payment of any existing or future obligation.[60]

Section 245(3) of the *ITA 1985* assumes a tax avoidance purpose 'unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit'.[61]

4 *Tax Purpose under the UK GAAR*

The United Kingdom GAAR is contained in Part 5 of the *FA 2013*, with section 207 as the main GAAR provision.

The UK GAAR uses a very broad notion of 'tax arrangement' but limits the application of the GAAR to only 'abusive' tax avoidance arrangements. In taking this approach, the UK GAAR seeks to strike a balance between attacking abusive tax avoidance practices and not attacking permissible tax planning arrangements. The UK GAAR was therefore never intended to be a broad spectrum GAAR, but instead aimed to be a narrow, targeted anti-abuse rule with a list of legislatively enacted criteria for the courts to use to determine whether there is abusive tax avoidance.[62]

The UK GAAR applies to abusive tax arrangements and requires that the tax arrangement must be abusive in the sense that it cannot be reasonably regarded as a reasonable course of action, having regard to the factors in *FA 2013* ss 207(2), (4).[63] This is now often referred to as the 'double-reasonableness test'. Section 207(5) of the *FA 2013* makes it clear that the relevant factors look to established practice to determine what is reasonable and therefore, not abusive. Section 207(2) of the *FA 2013* provides that a 'tax arrangement' is abusive if it cannot reasonably be said to be a reasonable course of action in relation to applicable tax legislation The double-reasonableness test looks to see whether the taxpayer achieved their tax outcomes by inserting contrived or abnormal

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60 *ITA 1985* (n 1) ss 246(1), (2).

61 Ibid s 245(3).

62 Aaronson Report (n 37) 3 [1.5], 4 [1.7].

63 *FA 2013* (n 2) ss 207(2), (4) set out the following factors:

> '(i) Tax arrangements are 'abusive' if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant provisions, having regard to all the circumstances including- A. whether the substantive results of the arrangements are consistent with any principles on which those provisions are based (whether express or implied) and the policy objectives of those provisions; B. whether the means of achieving those results involves one or more contrived or abnormal steps; and C. whether the arrangements are intended to exploit any shortcomings in those provisions.'

steps into the arrangement; if so, it is more likely that the arrangement could be attacked by the GAAR.[64] Section 270(4) of the *FA 2013* lists some indicators of abuse, however section 270(6) of the *FA 2013* indicates that this list is not intended to be exhaustive.

A defence is available to a taxpayer against the application of the UK GAAR if it can reasonably be regarded that the arrangement entered into or carried out was a reasonable exercise of choices of conduct afforded by the provisions of the *FA 2013*.

This burden of proving that the taxpayer did not satisfy this double-reasonableness test is to be met by the HMRC (and not the taxpayer).

Section 211 of the *FA 2013* provides that a court must consider any guidance about the general anti-abuse rule that was approved by the GAAR Advisory Panel ('GAAR Panel'). While this guidance can be changed by the GAAR Panel or the HMRC, the guidance does not carry any legislative weight.

It is the author's opinion, and also that of Cassidy, that this 'double-reasonableness' test arguably sets the bar for proving tax avoidance much higher in the UK than in other jurisdictions.[65]

(a) First Opinion of the UK GAAR Panel Published

On 4 August 2017, the first opinion of the GAAR Panel was published in a case of employee reward involving gold bullion.[66] The GAAR Panel concluded that the arrangement to provide one of the directors of a company (the wife of the other director) with gold bullion worth £150,000 (and for the company to claim a tax deduction for this same amount and at the same time for the amount not to constitute employment income of the director) was not a reasonable course of action and accordingly, could be subject to the UK GAAR.[67]

Since this first opinion, there have been at least fifteen additional anonymised opinions published by the GAAR Panel.[68] Freedman has observed that 'most of these opinions relate

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64 *HMRC GAAR Guidance* (n 17) [C5.8.1].

65 Julie Cassidy, 'GAAR (Anti-Avoidance) v GAAR (Anti-Abuse)' (2019) *New Zealand Journal of Tax Law and Policy* (forthcoming).

66 That it took more than 4 years for this first opinion to be released was broadly in line with what was expected, given that the UK GAAR only applies to arrangements undertaken after 17 July 2013, and for the time needed for tax returns to be filed, enquiries to be opened and facts established.

67 KPMG, 'TMD First Opinion of GAAR Advisory Panel Published' (Web Page, 2017) <https://home.kpmg/uk/en/home/insights/2017/07/tmd-first-opinion-of-gaar-advisory-panel-published.html>.

68 As at 19 May 2020 (with the latest visible at this date of writing being dated 2 March 2020). These published opinions can be found at HM Revenue and Customs, 'Tax Avoidance: General Anti-Abuse Rule' (Web Page, 2020) <https://www.gov.uk/government/collections/tax-avoidance-general-anti-abuse-rule-gaar#gaar-advisory-panel-opinions>.

to cases which might have been decided on technical grounds anyway, so that the need for a GAAR can be disputed'.[69]

Freedman has also noted that in each case, the GAAR Panel decided that the entering into or carrying out of the tax arrangements was not a reasonable course of action in relation to the relevant tax provisions.[70]

5 *Comparing the Purpose Element*

(a) Comparing the Purpose Element between the Australian and New Zealand GAARs

With respect to this third element, there does appear to be a significant difference between the Australian and New Zealand GAARs. The New Zealand GAAR is regarded as a broad model as it does not contain a list of relevant criteria to be considered in determining purpose, unlike the Australian GAAR. Furthermore, the New Zealand GAAR relies more on judicial discretion and therefore relies on judges to determine the intention of the taxpayers by looking to the scheme itself, without any reference to a specific set of factors. The purpose requirement under the New Zealand GAAR, as set out in section BG 1(1) of the *ITA 2007*, considers all arrangements that directly or indirectly have tax avoidance as their purpose or effect, or one of their purposes or effects, and where that purpose or effect is not merely incidental. The New Zealand GAAR would then apply to that arrangement unless the other purposes or effects of the arrangement are referable to ordinary business or family dealings.[71]

Despite this lack of detailed criteria to determine purpose, New Zealand courts, in applying the parliamentary contemplation test, have arguably proceeded to generally apply similar factors to those found in section 177D of the *ITAA 1936* which relate to the Australian GAAR. This was certainly the approach taken in the decisions of *Ben Nevis* and *Penny and Hooper v Commissioner of Inland Revenue*[72] ('*Penny and Hooper*').

The Australian GAAR arguably does require a stronger tax avoidance purpose as it requires a determination that the tax avoidance purpose is the sole or dominant purpose of the taxpayer in entering into the transaction. Whereas under the New Zealand GAAR, a tax avoidance purpose is required to be just one of the purposes of the taxpayer in entering into the arrangement, as long as that tax avoidance purpose is more than merely incidental.

As an example of the practical difference in the application of the purpose element in the Australian and New Zealand GAARs, it is interesting to compare and contrast the different results that were obtained in two somewhat comparable cases across both jurisdictions. Relevantly, these two cases had involved the use of a change in operating structure to

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69 Judith Freedman, 'The UK General Anti-Avoidance Rule: Transplants and Lessons' (2019) June/July *Bulletin for International Taxation* 332.

70 Ibid 335.

71 *ITA 2007* (n 1) s YA 1.

72 [2012] 1 NZLR 433.

obtain some tax and other benefits, such as asset protection. In the New Zealand case of *Penny and Hooper*, the surgeon taxpayers transferred their respective practices as sole traders to a newly related company owned by two respective family trusts. The New Zealand court applied the GAAR and held that there was tax avoidance in the use of this interposed professional practice since the tax benefits involved were more than merely incidental. This outcome can be compared to the result in the Australian case of *Mochkin v FCT*[73] ('*Mochkin*'), which also involved a change in operating structure, this time from the use of a sole trader to that of a family trust to carry on a share-broking business. The Federal Court in *Mochkin* found that the restructure did not amount to tax avoidance due to the presence of other identified purposes that drove the restructure, such as the desire to obtain asset protection.

The conclusion in *Mochkin* was therefore that the tax purpose involved was not the dominant purpose of the taxpayer in arranging the restructure of his practice.[74] The author submits that this difference in outcome between *Penny and Hooper* and *Mochkin* can be directly linked to the different threshold requirements — based on the different purpose elements — for establishing tax avoidance across both jurisdictions. Of course, factual differences can arguably always explain the different outcomes as well.

Despite the apparent differences in how 'purpose' is to be determined, the New Zealand Supreme Court in *Ben Nevis* effectively applied a range of factors very similar to those forming part of the Australian GAAR in determining whether the arrangements amounted to tax avoidance. Hence, factors — such as the manner in which the arrangement was carried out, the role of the relevant parties, the commercial and economic effect of the documents and transactions, and the nature and extent of the financial consequences for the taxpayer and related parties — were all relevant in assessing the level of artificiality and hence, determining 'purpose' in *Ben Nevis*.[75]

The application of similar factors by New Zealand courts in determining tax avoidance to those factors applying under the Australian GAAR, further supports a move towards a greater convergence in the ways GAARs are applied.

Another apparent point of difference between the Australian and New Zealand GAARs is the lack of any policy objective written expressly into the Australian income tax GAAR.

However, the High Court of Australia in *Hart* stated that a dominant tax purpose could be drawn if the transaction appeared to be artificial or contrived.[76] Taking this approach, and thereby giving much weight to this issue of artificiality, may suggest that the High Court of Australia has already acknowledged that the policy concepts of degree of contrivance or artificiality are, in some ways, already effectively embraced within the policy objectives of Part IVA of the *ITAA 1936*.

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73 2003 ATC 4272.

74 Ibid.

75 See *Ben Nevis* (n 19) [108]–[109].

76 *Hart* (n 11) 254 [86].

Arguably, a consideration of the level of artificiality is already embedded into the criterion of 'manner and form', as one of the eight criteria contained in section 177D of the *ITAA 1936*, and in this context, artificiality means lacking economic reality or substance.[77]

This view is also supported by the decision in *Federal Commissioner of Taxation v Spotless Services Limited*,[78] where the High Court of Australia stated that a transaction that is so 'attended with elements of artificiality or contrivance primarily directed to the obtaining of the tax benefit that any commerciality in the scheme [will be] overshadowed'.[79]

(b) Comparing 'Purpose' under the Australian and Canadian GAARs

There also appears to be a very significant difference between the Australian and Canadian GAARs in respect to determining the 'purpose' element of the GAAR. The Australian GAAR operates where a tax benefit is obtained in a scheme that — having regard to the eight factors listed in section 177D(2) of the *ITAA 1936* — the taxpayer entered into for the 'sole or dominant purpose' of obtaining the tax benefit.

By way of contrast, the Canadian GAAR, in *ITA 1985* s 245(4) involves the application of a two-stage test to determine, and strike down, avoidance transactions that 'primarily' amount to an abuse or misuse of the provisions of the *ITA 1985*.

The first stage involves a contextual, textual and purposive interpretation of the provisions that the taxpayer relies on to obtain the tax benefit. This is a question of law. The second step then involves a determination of whether the facts of the transaction fit in with a purposive analysis of the relevant provisions. This second step involves a factual enquiry.

Under the Canadian GAAR, if the facts of the transaction do not align with the purposive analysis of the relevant provisions, then an abuse of the provisions has occurred and the GAAR can be used to strike down the 'abusive' transaction. This 'abuse and misuse' test has become the major issue in all Canadian GAAR cases for many years now.[80]

In determining the purpose of the taxpayer under both the Canadian and Australian GAARs, the tax and other purposes are weighed up, and it is only where the tax purpose is the main purpose of the scheme or transaction that either GAAR will apply.

Furthermore, under both GAARs this purpose is determined at the time the transactions were undertaken and not in hindsight, and accordingly, does not include facts and circumstances that took place after the transactions were undertaken.[81] However, a key difference in the approaches of these GAARs is that the Australian GAAR is phrased more

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77 Orow (n 7) 58.

78 (1996) 186 CLR 404.

79 Ibid 408.

80 Cassidy, 'To GAAR or not to GAAR' (n 59) 299.

81 *OSFC Holdings Ltd* (n 35) [46].

specifically, as it contains the list of eight specific criteria used to determine purpose, whereas there is no such list contained in the Canadian GAAR.

The Canadian GAAR, on the other hand, is concerned with the 'object and spirit' of the *ITA 1985* as a whole, and whether the transaction in question amounts to a misuse or abuse of the object and spirit of the *ITA 1985* as a whole. This is undoubtedly a major difference between the two GAARs as the Canadian abuse or misuse test is not present in the Australian GAAR. As the Canadian GAAR is therefore less prescriptive than the Australian GAAR, this arguably leaves more work for the Canadian courts to do to interpret and apply the GAAR. Nevertheless, Cassidy has observed that there are still many similarities in the wording and operation of both the Australian and Canadian GAAR provisions to the effect that both GAARs operate in substantially similar ways.[82]

(c) Comparing 'Purpose' between the New Zealand and Canadian GAARs

There is a significant overlap in the current New Zealand approach with the Canadian approach, as under both GAARs the court's focus — per the specific wording of the respective legislation — is directed to the application of the test of bona fide non-tax reasons. This test of bona fide non-tax reasons looks to see what the primary purpose of the taxpayer was in entering into the transactions that are seen to be part of the overall arrangement. If the taxpayer's primary purpose, after weighing up all the relevant tax and non-tax purposes, was determined to be mainly for tax reasons, then the transaction will be made void, and conversely, if it was determined that the transaction was entered into mainly for non-tax reasons, it will not be declared void.

New Zealand courts have interpreted the New Zealand GAAR using a parliamentary contemplation approach, whilst Canadian courts have interpreted the Canadian GAAR by using a purpose test under the misuse and abuse test outlined in s 245(4) of the *ITA 1985*.

It is considered by some that in essence the 'parliamentary contemplation' test used in New Zealand and the 'abuse and misuse' test used in Canada are very much the same.[83] Both jurisdictions go about an almost identical process to determine if a transaction or arrangement is a misuse or abuse of the tax law (as in Canada) or is against parliament's contemplation (as in New Zealand), achieving ultimately the same end result.

Both jurisdictions first seek to determine the purpose of the relevant specific provision and then seek to examine the facts of the particular transaction or arrangement, in order to determine if the transaction or arrangement is in line with the identified purpose. The fact that the two jurisdictions undertake a similar process, ending up with an almost identical result, was evident in 2013 in two different cases across both jurisdictions. In Canada, the court found in *Global Equity Fund*,[84] that the transactions involved were

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82 Cassidy, 'To GAAR or not to GAAR' (n 59) 312.

83 Plenary Speech (unpublished) by Justice William Young of the New Zealand Supreme Court at the Australasian Tax Teachers Conference at the University of New South Wales in Sydney on 22 January 2016. This is also the conclusion of the thesis by Stella Kasoulides Paulson, 'When it comes to General Anti-Avoidance Rules, is Broader Better?' (LLM Thesis, Victoria University of Wellington, 2013) 18.

84 2013 DTC 5007.

abusive as they sought to take advantage of tax loss provisions in circumstances where the taxpayer did not genuinely 'incur' or 'suffer' the actual tax loss.[85]

The New Zealand High Court in *Alesco New Zealand Limited and Ors v Commissioner of Inland Revenue*[86] ('*Alesco*'), applied the parliamentary contemplation test and in so doing, reached the conclusion that the provisions had been used outside of their intended scope. In *Alesco,* Heath J of the New Zealand High Court determined that parliament's purpose with respect to financial arrangement rules was that there be a match between real income and real expenditure, and that this was not evidenced in the taxpayer's transaction, which was held to be not genuine and accordingly, no deduction was allowed for the claimed expenditure.[87]

The Canadian Supreme Court in *Copthorne* made it clear that extra factors, not stated in the legislation, can be considered to determine if the transaction at issue amounts to an abuse of the statute as a whole.[88] The Supreme Court of New Zealand has said almost the same thing in *Ben Nevis*, where the court emphasised that broad enquiry is required under section BG 1 of the *ITA 2007*:

> The general anti-avoidance provision does not confine the Court as to the matters which may be taken into account when considering whether a tax avoidance arrangement exists. Hence the Commissioner and the courts may address a number of relevant factors, the significance of which will depend on the particular facts.[89]

This similarity in the operation of the Canadian and New Zealand GAARs further supports the view that the enquiry under both GAARs is essentially the same in substance, even despite there being some differences in the wording of the tests used.

(d) Comparing 'Purpose' in the GAARs across the Different Jurisdictions

All the jurisdictions reviewed have the similarity of identifying the purpose behind the transaction, scheme or arrangement that the taxpayer has entered into but there are seemingly significant differences in how that purpose is determined. Under the Australian GAAR, purpose is determined objectively against a list of eight criteria.

However, under the New Zealand and Canadian GAARs there are no identified criteria to use to identify purpose. The New Zealand GAAR simply requires there to be a tax avoidance purpose as one of the purposes of the arrangement, but which is more than merely incidental.

The Canadian GAAR requires that, in determining taxpayer purpose, regard is to be had to the object and spirit of the *ITA 1985*. Furthermore, the UK GAAR does not have regard

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85 Ibid [5226] (per Mainville JA).

86 [2013] NZCA 40.

87 Ibid [105].

88 *Copthorne* (n 32) [70]–[71].

89 *Ben Nevis* (n 19) [108].

to specific criteria in determining purpose, however it does contain examples of the types of behaviours that would amount to an abuse of the *FA 2013*.

Each of the GAARs reviewed appear to differ — in some cases, significantly — in the requirement of establishing purpose, with the New Zealand GAAR arguably, requiring a tax purpose that is only more than incidental, setting a lower bar to find avoidance. The more detailed Australian GAAR and the UK GAAR appear to have set a much higher bar, to primarily catch the more abusive type of cases. However, ultimately, the author argues that each of these GAARs undertakes a similar analysis and often ends up achieving the same result (but not always as facts and personalities in the courts can, and do, always make a difference) as they each focus on the level of artificiality of the scheme, arrangement or transaction. This similar weighing up process, further corroborating a trend towards convergence, indicates that the process to determine whether the GAAR should apply, is a process undertaken in much the same way across all the jurisdictions reviewed and the court has a responsibility, with its judicial skill and its obligation, as Kirby J puts it, 'to initiate a search for the "real" or "true" effect of the dealings'.[90]

Whilst each jurisdiction may approach the issue of purpose somewhat differently, this paper concludes that each jurisdiction does require a similar objective determination of the purposes of the taxpayer.

In determining this purpose, the competing and various purposes of the taxpayer in entering into the arrangement, scheme or transaction, a determination has to be made whether an not-insignificant overall, dominant or primary tax purpose of the taxpayer to obtain the tax benefit is present.

IV OUTCOMES OF ANALYSIS

Despite some differences in wording and even in apparent operation, it is the author's conclusion that each of the GAARs reviewed apply a similar substantive enquiry determined by judicial interpretation and application. The enquiry is effectively the same, whether this involves the application of the 'double-reasonableness' test, as applied in the UK GAAR, or the sole or dominant purpose of the taxpayer test used in Australia, or the NZ parliamentary contemplation test, or the abuse and misuse test as adopted in Canada.

That enquiry is essentially whether the arrangement, scheme or transaction resulted in a tax benefit to the taxpayer that has tax as its main, or at least not incidental, purpose where that tax benefit has been obtained in ways not intended or contemplated by parliament.

However, it is conceded that the threshold at which this test for artificiality is set does differ in some ways between the various jurisdictions, with the UK setting the threshold at arguably too high a level. Under the UK GAAR, abuse will only be found where it cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions. Arguably, the Canadian GAAR threshold is also set very high, with one

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90 Michael Kirby, 'Of Sham and Other Lessons for Australian Revenue Law' (2008) 32(3) *Melbourne University Law Review* 861, 872.

commentator suggesting that the Canadian GAAR is only effective against clearly abusive transactions.[91]

The Australian threshold is arguably the next highest, requiring the tax avoidance purpose to be the main or dominant purpose in any scheme that produces a tax benefit. The New Zealand GAAR arguably requires a lower threshold, as under the New Zealand GAAR, the tax purpose of the taxpayer only needs to be more than incidental.

In reviewing the Australian, Canadian and New Zealand GAARs, Cooper stated that they 'share a common approach and terminology, and the feature that they are reasonably fulsome and carefully drafted. All have been recently revised, and display the common design elements needed by a GAAR.'[92]

Furthermore, the Australian, New Zealand, Canadian and UK GAARs all share the similar feature of being 'acts and benefits GAARs'.[93] That is to say, these GAARs allow the tax authorities to identify a transaction, or series of transactions, that had the purpose or effect of providing a tax benefit, and then to recompute the taxpayer's liability on the basis of a hypothetical transaction that the tax authorities view as the transaction that the taxpayer would have entered into if it had not followed the tax-effective path it took.

V CONCLUSION

Despite some differences in wording and even in apparent operation, the author concludes that all the GAARs reviewed operate in very similar ways as they all involve a similar substantive enquiry determined by judicial application. Ultimately, no matter what the specific wording of the GAAR may actually be, the enquiry by the court is effectively the same.

This enquiry looks to the overall purpose and structure of the transactions at issue, and whether they lack any real commercial substance. This conclusion may seem contrary to prevailing attitudes about the enforceability and interpretation of statutes, however, the evidence reviewed leads to the overwhelming conclusion that no matter what specific wording is actually used in the GAAR, the identification of tax avoidance as involving artificial contrived complex arrangements which produce no real economic substance, is applied in largely the same way across the different jurisdictions examined.

Whilst seemingly different tests are used, the enquiry undertaken by the courts in each jurisdiction reviewed is always largely centred on the same issue: to determine whether the arrangement, scheme or transaction lacks any real commercial substance. That similar enquiry is also to determine whether the transaction has resulted in a tax benefit

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91 Cassidy, 'To GAAR or not to GAAR' (n 59) 312–313.

92 Graeme S Cooper, 'International Experience with General Anti-Avoidance Rules' (2001) 54(1) *SMU Law Review* 83, 97–98.

93 Richard Krever, 'General Report: GAARs' in Michael Lang et al, *GAARs – A Key Element of Tax Systems in the Post-BEPS World* (IBFD, April/May 2016) vol 3, 1.

to the taxpayer that has tax as its main, or at least not incidental, purpose and so whether that tax benefit has been obtained in ways not intended or contemplated by parliament.

It is, however, acknowledged that whilst the enquiry undertaken is generally the same, there are, nevertheless, subtle differences in outcomes possible due to different thresholds being applied to determine where the line of artificiality should be placed.

VI SUMMARY

All the GAARs reviewed — Australia, New Zealand, Canada and the United Kingdom — operate in substantially similar ways and therefore, undertake similar material enquiries and largely (but not always) achieve the same result

The application of a GAAR requires judicial interpretation and application. Since each jurisdiction has adopted the purposive approach to interpreting tax legislation, the substantive enquiry is always likely to be substantially similar. Consequently, it is argued that there is no fundamental difference in approach to applying the GAAR in each jurisdiction (although, since different jurisdictions set different thresholds for determining where the line of tax avoidance is to be drawn, different outcomes are indeed possible).

Putting this another way, it does not seem to matter whether the court uses an 'abuse' test or a 'parliamentary contemplation' test, or applies the economic substance doctrine, or applies the eight factors in section 177D of the *ITAA 1936*; the same fundamental enquiry is ultimately undertaken by the courts in each jurisdiction. That enquiry focuses on similar suggestive factors such as: whether the transaction is artificial in nature; whether the transaction lacks economic substance; whether the transaction involves undue complexity; whether the transaction involves the use of related parties; whether there is a difference between legal form and the economic reality of the transaction; and whether the transaction is undertaken largely for tax reasons.

This conclusion is not altogether new as it has also been the conclusion of Evans, Kasoulides Paulson, Krever and Mellor, and others.[94]

Evans recognised that there was 'some degree of convergence in the jurisprudence in some of the common law jurisdictions in the approach taken by the courts to avoidance type cases, albeit through the interpretation of very different legislation'.[95] This was also a conclusion reached in part by Freedman when commenting on achieving similar outcomes in Canada in cases such as *Canada Trustco* and *Mathew v The Queen*,[96] as by

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94 Chris Evans, 'Containing Tax Avoidance: Anti-Avoidance Strategies' (Working Paper No 40, UNSW Faculty of Law Research Series, June 2008) 2. Kasoulides Paulson (n 83) 49, 55. Richard Krever and Peter Mellor, 'Legal Interpretation of Tax Law: Australia' in Robert F van Brederode and Richard Krever (eds), *Legal Interpretation of Tax Law* (Wolters Kluwer, 2nd ed, 2017)15, 32.

95 Chris Evans, 'Barriers to Avoidance: Recent Legislative and Judicial Developments in Common Law Jurisdictions' (2007) 37(1) *Hong Kong Law Journal* 103, 103.

96 2005 SCC 55.

courts in the UK in cases such as *Barclays Mercantile Business Finance Ltd v Mawson*[97] and *IRC v Scottish Provident Institution*,[98] although these similar outcomes were achieved by very different routes.[99] The end result achieved by the courts in the different jurisdictions is that the same unacceptable behaviour (self-cancelling transactions, lack of exposure to real risk, inclusion of tax-favoured parties into transactions, and lack of arms-length dealing) is likely to be caught under the Canadian, New Zealand or the Australian provisions. This is also likely to be true of the UK provisions with respect to the more abusive type of arrangements, however, as noted elsewhere in this paper, the application of the UK provisions is much more restricted as the UK provisions are targeted only at the most abusive of schemes.

Although the same fundamental enquiry is undertaken, regardless of the wording used, it is conceded that there are subtle differences between the reviewed GAARs in regard to where the threshold is set for acceptable tax planning versus unacceptable tax avoidance. An example of this is the different outcomes reached in the business restructure cases of *Mochkin* in Australia (which was held not to be tax avoidance) and *Penny and Hooper* in New Zealand (which held that there was tax avoidance).

Notwithstanding, this paper has argued that despite the differences in the wording between the different GAARs, there is effectively no real difference in the operation of each GAAR. Each GAAR aims to achieve the same end result, to strike down artificial contrived arrangements that produce tax advantages with no real economic substance (although it is conceded that the threshold does differ between the GAARs).

Since substantially the same enquiry is undertaken under each of the GAARs, and there is no effective difference between a GAAR with more detailed criteria, than one that does not have detailed criteria for its application, the author argues that this is leading to an increasing convergence in the way each of the different GAARs operate.

REFERENCES

A *Articles/Books/Reports*

Aaronson, Graham, *GAAR Study: A Study to Consider Whether a General Anti-Avoidance Rule Should be Introduced into the UK Tax System* (Report, 2011)

Barkoczy, Stephen, 'The GST General Anti-Avoidance Provisions – Part IVA with a GST Twist' (2000) 3(1) *Journal of Australian Taxation* 35

Cassidy, Julie, 'GAAR (Anti-Avoidance) v GAAR (Anti-Abuse)' (2019) *New Zealand Journal of Tax Law and Policy* (forthcoming)

97 [2005] 1 AC 684.

98 [2004] UKHL 52.

99 See Judith Freedman, 'Barclays and Scottish Provident: Avoidance and Highest Courts; Less Chaos but More Uncertainty' [2005] 3 *British Tax Review* 273, 274.

Cassidy, Julie, 'To GAAR or not to GAAR – That is the Question: Canadian and Australian Attempts to Combat Tax Avoidance' (2005) 36(2) *Ottawa Law Review* 259

Cooper, Graeme S, 'International Experience with General Anti-Avoidance Rules' (2001) 54(1) *SMU Law Review* 83

Evans, Chris, 'Barriers to Avoidance: Recent Legislative and Judicial Developments in Common Law Jurisdictions' (2007) 37(1) *Hong Kong Law Journal* 103

Fernandes, David and Kerrie Sadiq, 'A Principled Framework for Assessing General Anti-Avoidance Regimes' [2016] 2 *British Tax Review* 172

Freedman, Judith, 'Barclays and Scottish Provident: Avoidance and Highest Courts; Less Chaos but More Uncertainty' [2005] 3 *British Tax Review* 273

Freedman, Judith, 'The UK General Anti-Avoidance Rule: Transplants and Lessons' (2019) June/July *Bulletin for International Taxation* 332

Hogg, Peter W, Joanne E Magee and Jinyan Li, *Principles of Canadian Income Tax Law* (Carswell, 7th ed, 2010)

Kirby, Michael, 'Of Sham and Other Lessons for Australian Revenue Law' (2008) 32(3) *Melbourne University Law Review* 861

Krever, Richard, 'General Report: GAARs' in Michael Lang et al, *GAARs – A Key Element of Tax Systems in the Post-BEPS World* (IBFD, April/May 2016)

Krever, Richard and Peter Mellor, 'Legal Interpretation of Tax Law: Australia' in Robert F van Brederode and Richard Krever (eds), *Legal Interpretation of Tax Law* (Wolters Kluwer, 2nd ed, 2017)

Orow, Nabil, *General Anti-Avoidance Rules: A Comparative International Analysis* (Jordans, 2000)

Samtani, Pooja and Justin Kutyan, 'GAAR Revisited: From Instinctive Reaction to Intellectual Rigour' (2014) 62(2) *Canadian Tax Journal* 401

B *Cases*

Alesco New Zealand Limited and Ors v Commissioner of Inland Revenue [2013] NZCA 40

Barclays Mercantile Business Finance Ltd v Mawson [2005] 1 AC 684

Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue [2009] 2 NZLR 289

Canadian Pacific Ltd v The Queen 2000 CanLII 265

Canada Trustco Mortgage Co v Canada [2005] 2 SCR 601

Challenge Corporation Ltd v Commissioner of Inland Revenue [1986] 2 NZLR 513

Commissioner of Inland Revenue v BNZ Investments Ltd [2002] 1 NZLR 450

Commissioner of Taxation v Hart (2004) 217 CLR 216

Copthorne Holdings Ltd v Canada 2009 FCA 163

Copthorne Holdings Ltd v Canada [2011] 3 SCR 721

Elmiger v Commissioner of Inland Revenue [1966] NZLR 683

Federal Commissioner of Taxation v Spotless Services Limited (1996) 186 CLR 404

Global Equity Fund 2013 DTC 5007

IRC v Scottish Provident Institution [2004] UKHL 52

Mathew v The Queen 2005 SCC 55

McNichol v The Queen (1997) 97 DTC 111

Mochkin v FCT 2003 ATC 4272

OSFC Holdings Ltd v The Queen 2001 DTC 5471

Penny and Hooper v Commissioner of Inland Revenue [2012] 1 NZLR 433

Univar Canada Ltd v R 2005 DTC 1478

WT Ramsay Ltd [1982] A.C. 300 (House of Lords)

C *Legislation*

Finance Act 2013 (UK)

Income Tax Act 1985 (Canada)

Income Tax Act 2007 (NZ)

Income Tax Assessment Act 1936 (Cth)

Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Act 2013 (Cth)

D *Other*

Cooper, Graeme S, 'The Role and Meaning of "Purpose" in Statutory GAARs' (Research Paper No 16/22, Sydney Law School Legal Studies, March 2016)

Evans, Chris, 'Containing Tax Avoidance: Anti-Avoidance Strategies' (Working Paper No 40, UNSW Faculty of Law Research Series, June 2008)

Explanatory Memorandum, Income Tax Laws Amendment Bill (No 2) 1981 (Cth)

Freedman, Judith, 'Designing a General Anti-Abuse Rule: Striking a Balance' (Research Paper No 53/2014, University of Oxford Legal Research Paper Series, August 2014)

Her Majesty's Revenue and Customs, *HMRC's GAAR Guidance* (2013)

HM Revenue and Customs, 'Tax Avoidance: General Anti-Abuse Rule' (Web Page, 2020) <https://www.gov.uk/government/collections/tax-avoidance-general-anti-abuse-rule-gaar#gaar-advisory-panel-opinions>

HM Treasury, *2012 Budget*, House of Commons (HC 1853, 21 March 2012)

KPMG, 'TMD First Opinion of GAAR Advisory Panel Published' (Web Page, 2017) <https://home.kpmg/uk/en/home/insights/2017/07/tmd-first-opinion-of-gaar-advisory-panel-published.html>

Kasoulides Paulson, Stella, 'When it comes to General Anti-Avoidance Rules, is Broader Better?' (LLM Thesis, Victoria University of Wellington, 2013)

THE 'EBB AND FLOW' OF FISCAL SUPPORT FOR RESEARCH AND DEVELOPMENT: A NEW ZEALAND REFLECTION

ADRIAN SAWYER*

ABSTRACT

New Zealand's investment in research and development ('R&D') activities as a percentage of its Gross Domestic Product has remained near the bottom of the Organisation for Economic Co-operation and Development member countries. Efforts to improve this level have involved various targeted grants, tax credits (twice) and cashing out of R&D losses (a form of government loan), and have ebbed and flowed with the changes in government. This paper reviews New Zealand's approach from the early 2000s to the latest tax credit scheme that took effect in 2019. The paper reveals that the level of uncertainty, frequent change and political philosophies of the nation's various governments have done little to encourage businesses to take risks through increasing their investment in R&D.

Keywords: incentives, New Zealand, policy, research and development, R&D

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"We do not learn from experience … we learn from reflecting on experience" – John Dewey

I INTRODUCTION

The New Zealand government has, on numerous occasions, sought to stimulate research and development ('R&D') investment through statutory intervention. The objective of this paper is to assess the implications of providing tax incentives for R&D expenditure. This is conducted through a case study focussing on one jurisdiction, New Zealand ('NZ'). To set the scene, in NZ with respect to incentivising investment in R&D activities, eligible R&D activities must be:

a) systematic, investigative and experimental activities (SIE) that are performed for the purposes of acquiring new knowledge or creating new or improved materials, products, devices, processes or services and that:

   - are intended to advance science or technology through the resolution of scientific or technological uncertainty; or
   - involve an appreciable element of novelty.

b) other activities that are wholly or mainly for the purpose of, required for, and integral to, the carrying on of the activities in paragraph (a).[1]

While this definition applies for taxation purposes, a much bigger question (which is beyond the scope of this paper) exists: what is R&D from an accounting perspective and does investment in R&D create an asset or is it an expense? For these purposes, guidance is found in applicable accounting standards, including NZ IAS 38 which deals with intangible assets.[2]

According to Statistics NZ,[3] in 2018:

- Total R&D expenditure increased 24 per cent from 2016, to $3.9 billion;
- R&D expenditure by businesses reached over $2.1 billion, accounting for 55 per cent of total R&D expenditure;
- R&D expenditure by service industries increased $534 million (64 per cent) from 2016; and

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1 *Income Tax Act 2007* (NZ) s LH 7 ('*ITA 2007*'). This is the definition that applies for eligibility for the new R&D tax credit that came in with effect from the 2019–20 income year.

2 Under *ITA 2007* (n 1) s DB 26, an item of expenditure will be deductible for taxation purposes in accordance with the accounting standards provided in Financial Reporting Standard ('FRS') FRS-13, paragraph 5.3. With NZ adopting International Financial Reporting Standards ('IFRS'), FRS-13 is superseded by NZ IAS 38, an accounting standard on intangibles also governs the accounting treatment for R&D expenditure. NZ IAS 38 paragraph 57 provides that expenditure on R&D is recognised as an expense when it is incurred unless the criteria for recognition of development expenditure as an intangible asset are satisfied. Although these criteria are worded differently from those in FRS-13, the new standards are largely consistent with the old standards.

3 See New Zealand Government, 'Research and Development Survey: 2018' (Web Page, 28 February 2019) <https://www.stats.govt.nz/information-releases/research-and-development-survey-2018>.

- R&D expenditure as a proportion of Gross Domestic Product ('GDP') was 1.37 per cent.

Putting this information into perspective, the Organisation for Economic Co-operation and Development ('OECD') average in 2018 for R&D expenditure was 2.37 per cent of GDP.[4] This indicates that NZ is only achieving R&D investment at 58 per cent of the OECD average. Notwithstanding efforts to increase the level of investment, NZ consistently falls well below the OECD average for R&D investment. This is a state of affairs that cannot be allowed to continue if NZ wishes to improve its productivity, GDP and overall net wealth per capita.

This presents another question: how has the NZ government responded, on behalf of the country, to this relatively 'poor performance'? In addition to clarifying the definitions of 'research' and 'development' (including reducing the levels of black hole expenditure),[5] NZ has frequently intervened through targeted legislation and the establishment of various Crown entities. These interventions include:

- Creating a tax credit (twice, the first in 2008 and the second in 2019);[6]
- Enabling certain businesses with losses to cash out their R&D tax credit; and
- Establishing a grants-based scheme administered by a government agency (currently, Callaghan Innovation).[7]

NZ's journey is characterised by disparate political views and frequent legislative change. Complex challenges for businesses (especially small business) in understanding and taking advantage of the support provided by government abound. Frequent changes in eligibility criteria and level of funding have further exacerbated the situation. Uncertainty, accompanied by change, is the prevailing theme.

It is moot as to whether the most recent changes in 2019 will enable NZ's R&D tax regime to be more internationally competitive. The *Taxation (Research and Development Tax*

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4 See Organisation for Economic Co-operation and Development ('OECD'), 'Gross Domestic Spending on R&D' (Web Page, 2020) <https://data.oecd.org/rd/gross-domestic-spending-on-r-d.htm>.

5 Black hole expenditure is business expenditure that is expected to result in an economic cost to a taxpayer, but is neither immediately deductible for tax purposes, nor deductible over time. It is not deductible over time because it does not form part of the cost of depreciable property for tax purposes. Thus, it refers principally to situations where taxpayers would have received depreciation deductions had a project gone ahead (because the asset was expected to decline in value), but did not because the project was abandoned before it met the definition of depreciable property. See Steven Joyce and Judith Collins, *Black Hole and Feasibility Expenditure: A Government Discussion Document* (Inland Revenue, May 2017).

6 The first tax credit, created under a Labour-led Government, operated for one year before the incoming National-led Government repealed it. The second scheme was introduced by the new Labour-led Government in 2018 with effect from 1 April 2019.

7 Callaghan Innovation states that it '… provide[s] a single front door to the innovation system for businesses at all stages of their innovation journey – from start-ups to the most experienced R&D performers': see Callaghan Innovation, 'About Us – Our Role' (Web Page, 2020) <https://www.callaghaninnovation.govt.nz/about-us/our-role>.

Credits) Act 2019 (NZ) reintroduced a 15 per cent tax credit with effect from 1 April 2019. Further modifications to the refundability of R&D tax credits are contained in the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill 2019 (NZ), which is expected to be enacted later in 2020.[8]

Further and more generally, debate is far from settled as to whether R&D incentives actually have an impact in increasing investment in R&D activities.[9] The mere existence of fiscal incentives may not in themselves be sufficient to stimulate R&D investment; more may be needed, including appropriate design and collection of data. If fiscal incentives are considered desirable, the author's view, as will be expended upon in this paper, is a clear preference for interventions by way of tax incentives with clear guidelines for all qualifying entities (such as through tax credits), over limited grants that may be available to selected enterprises upon application and which are assessed based upon limited guidance developed by relevant government officials.

The importance of public policy and its influence on R&D should not be underestimated, as noted in a recent OECD study:

> Public policy has an important role to play in promoting research and development (R&D) the development, diffusion, and use of new knowledge and innovations. *Fiscal incentives, including tax policies, should be directed at specific barriers, impediments or synergies to facilitate the desired level of investment in R&D and innovations*. Without careful design, policies can have unintended consequences such as favouring incumbent firms, encouraging small firms to undertake less efficient activities, or creating arbitrage and rent-seeking activity. *R&D tax policy needs to be considered in the context of the country's general tax policies, its broader innovation policy mix and its other R&D support policies*. More R&D activity in one country does not necessarily result in an overall increase in global innovation if it is simply shifted from another country. More research is needed to determine the extent to which R&D fiscal incentives in one country increase overall R&D, the quality of that R&D, and its positive spillovers to other sectors of the economy and other countries.[10]

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8 At the time of writing, the Bill has been reported back to Parliament following the hearing of submissions. No date has been set for its second reading. A number of points raised by submitters have been accepted by Officials or have been recommended that the point(s) raised be noted.

9 See, eg, Silvia Appelt et al, 'R&D Tax Incentives: Evidence on Design, Incidence and Impacts' (Policy Paper No 32, OECD Science, Technology and Industry, 10 September 2016); Irem Guceri and Li Lu, 'Effectiveness of Fiscal Incentives for R&D: Quasi-Experimental Evidence' (2019) 11(1) *American Economic Journal: Economic Policy* 266; Lucy Minford and David Meenagh, 'Testing a Model of UK Growth: A Role for R&D Subsidies' (2019) 82 *Economic Modelling* 152. See also Hanna Spinova and Theodoros Rapanos, 'R&D Tax Incentives: Do R&D Tax Incentives Stimulate Innovations and Economic Growth? Evidence of OECD Countries' (Working Paper, Södertörns högskola, Institutionen för Samhällsvetenskaper, 18 January 2019); Petr Svoboda, 'The Impact of Tax Incentives on Research and Development' (2017) 65(2) *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* 737 (tax incentives are a more effective form of research and development support than direct government funding).

10 Tom Neubig et al, 'Fiscal Incentives for R&D and Innovation in a Diverse World' (Working Paper No 27, OECD Taxation, 13 September 2016) 5 (emphasis added).

A further argument is that the presence of a capital gains tax ('CGT') assists in encouraging investment in R&D type activities as it provides an avenue for allowing capital losses to be offset against other forms of capital gains.[11] NZ, as a member of the OECD, is the only country without a formal CGT regime.[12] This could, in part, explain why there is a lower level of investment in R&D activities, since any capital losses arising from R&D activities are unable to be offset against capital gains (there being no liability to tax for such gains unless they are caught under various income tax criteria).[13]

Fiscal support for R&D activities in NZ is premised upon a neoliberal culture that assumes the best outcomes from support funding is achieved through contestable means.[14] This approach pits researcher(s) against researcher(s), necessitating that they (at least) implicitly advocate why their proposed research should be funded at the expense of others. There is also a very limited 'pot' from which projects can be funded. This approach applies to research funding generally, such as the elite Marsden Fund for researchers, along with more generally the Performance Based Research Fund ('PBRF').[15] This approach is also present in the R&D context in NZ with the Callaghan Innovation grants funding mechanism which is discussed in more detail in Part III of this paper. Accordingly, there would appear to be minimal chance that this underlying philosophy of promoting competition will change for the foreseeable future.

The perspective taken in this paper is largely positivist, in that it reviews political interventions to encourage investment in R&D activities. Normative suggestions are also offered in interpreting the effects of these interventions. This paper takes a policy

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11 See, eg, Mark Bowler-Smith, 'New Zealand National IFA Branch Report: Tax Incentives on Research and Development' (2014) 100a *Cahiers de Droit Fiscal International*. Bowler-Smith suggests the absence of a CGT in NZ may be to the country's benefit in promoting investment in R&D activities.

12 Attempts to develop a CGT for NZ were made with the Tax Working Group established by the NZ government in 2017. Its proposal for a CGT included in its Final Report in February 2019 was rejected by the Labour-led Government in April 2019. See Grant Robertson and Stuart Nash, 'Govt Responds to Tax Working Group Report' (Media Release, New Zealand Government, 17 April 2019) <https://www.beehive.govt.nz/release/govt-responds-tax-working-group-report>.

13 For recent discussion on the taxation of certain capital gains in NZ see Chris Evans and Richard Krever, 'Taxing Capital Gains: A Comparative Analysis and Lessons for New Zealand' (2017) 23(4) *New Zealand Journal of Taxation Law and Policy* 486; Kerrie Sadiq and Adrian Sawyer, 'New Zealand's "Experience" with Capital Gains Taxation and Policy Choice Lessons from Australia' (2019) 16(2) *e-Journal of Tax Research* 362.

14 For discussion on the implications of this approach see, eg, Branko Marcetic, 'New Zealand's Neoliberal Drift', *Jacobin* (Article, 2016) <https://www.jacobinmag.com/2017/03/new-zealand-neoliberalism-inequality-welfare-state-tax-haven/>. See generally, Kelly Freebody et al, 'Who is Responsible? Neoliberal Discourses of Well-Being in Australia and New Zealand' (2018) 42(2) *NJ Drama Australia Journal* 139.

15 See Royal Society of New Zealand, 'Marsden Fund' (Web Page, 2020) <https://www.royalsociety.org.nz/what-we-do/funds-and-opportunities/marsden>; Tertiary Education Commission, 'Performance Based Research Fund' (Web Page, 2020) <https://www.tec.govt.nz/funding/funding-and-performance/funding/fund-finder/performance-based-research-fund/>. See also, Leon Benade, Nesta Devine and Georgina Stewart, 'The 2019 PBRF Review: What's to be done?' (2019) 54 *New Zealand Journal of Educational Studies* 225.

perspective, drawing upon documentary analysis of various scholars and commentators who offer insights into R&D interventions. This paper does not attempt to analyse legislation and regulations in detail, and as a consequence, does not utilise 'blackletter' legal analysis techniques.

The paper adopts an in-depth exploratory case study approach in order to examine, over time, the various political interventions to encourage investment in R&D activities. It is common to see criticism of case studies as a research method, with some viewing the method as a non-scientific approach to undertaking research. Notwithstanding this view, case study research is utilised extensively in academic enquiry in traditional social science disciplines as well as practice-oriented fields. When completing case studies, the design and analysis considerations are of prime importance, more often than the description of events or the scenario under review. As Yin states,[16] the need for a case study arises out of the desire to understand complex social phenomena and allows investigators to retain the holistic and meaningful characteristics of real-life events.

Ultimately, the research question this paper seeks to answer is: what can we learn from NZ's political intervention experience to encourage investment in R&D activities? As noted above, answering this research question necessitates that an in-depth exploratory case study analysis be performed.

Accordingly, this paper will conduct a historical review, drawing substantially upon the earlier contributions of Sawyer[17] and Robinson.[18] The paper will also evaluate subsequent developments, including the recently enacted R&D tax credit scheme in 2019. In particular, Part II provides context to the NZ R&D interventions, with commentary concerning the early review of their impact and effectiveness. Part III proceeds to bring these reviews together and explores the issue of the R&D inventions being 'hostage' to political ideologies, rather than necessarily working to stimulate NZ's level of R&D investment to meet, at least, the average for the OECD member countries. The paper concludes with Part IV detailing the author's concluding observations, limitations of the research and suggests some areas for future study.

II BACKGROUND AND REVIEW

Much has been written globally about R&D fiscal incentives, whether it be through tax credits, grants or other forms of support. This comes from various perspectives, including econometric analysis and political science. It is not the intention of this paper to undertake a further comprehensive review of the relevant literature. Rather, as a single country case

16 Robert K Yin, *Case Study Research and Applications: Design and Methods* (Sage Publications, 6th ed, 2017).

17 Adrian Sawyer, 'Reflections on Providing Tax Incentives for Research and Development: New Zealand at the Cross Roads' (2005) 8(1) *Journal of Australian Taxation*, 111.

18 Alex Robinson, 'The Rise and Fall of R&D Tax Credits in New Zealand: The Practitioner's Perspective' (BCom Thesis, University of Canterbury, 2009).

study, this Part will briefly review the contributions to the R&D literature from a NZ perspective.

Business expenditure on R&D in NZ is low in comparison to other OECD countries. In an OECD working paper in 2017, the author comments:

> New Zealand's R&D expenditure, especially by the business sector, is low as a share of GDP ... While it might be reasonable for New Zealand to aspire to a lower level of R&D spending than leading OECD countries due to its industry structure, size and location, *its productivity is hampered by its low rate of R&D expenditure* …[19]

One attempt to redress this was the establishment of Callaghan Innovation in 2013 as a source of funding for R&D grants; this development is explored further in Part III. Deakins et al, in a series of interviews with technology-based small firms ('TBSFs') in NZ, concluded:

> Direct government support for TBSFs has been through mechanisms such as technology grants and vouchers targeted at R & D and later stage growth and project development. Whilst such grants have been welcomed as being valuable by our entrepreneur respondents, they have not been without criticism. Some technology entrepreneurs *expressed a preference for R&D tax credits rather than direct grants whilst others perceived grant mechanisms as too bureaucratic, discouraging some firms that would have had eligible projects from applying*. Grants often carry high levels of deadweight (the investment in R&D would have occurred without financial support, perhaps at a later time or at a lower level), arguably resulting in some firms becoming too grant dependent, so the value of relatively high levels of state expenditure could be questioned. However, this would require a full economic evaluation to provide an informed opinion.[20]

Le and Jaffe provide further empirical evidence of the effect of an R&D subsidy on innovation in NZ.[21] The authors' study examined the impact of government subsidies through R&D grants on innovation output for firms in NZ. The authors had access to a large database that linked administrative and tax data with survey data, and found that R&D grants have a stronger effect on more novel innovation than on incremental innovation. They also found that larger, project-based grants are more effective at promoting innovation compared to smaller, non-project-specific grants. Interestingly, there was little evidence to support the proposition that R&D grants have differential effects between smaller (less than 50 employees) and larger firms.

Most recently, Nakatani provides a positive early analysis on the potential impact of the recently enacted R&D tax credit scheme. Nakatani concludes his analysis as follows:

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19 Andrew Barker, 'Improving Productivity in New Zealand's Economy' (Working Paper No 1419, OECD Economics Department, 2017) 15 (emphasis added).

20 David Deakins, David North and Jo Bensemann, 'Paradise lost? The Case of Technology-Based Small Firms in New Zealand in the Post-Global Financial Crisis Economic Environment' (2015) 17(1-2) *Venture Capital* 129, 147 (emphasis added).

21 Trinh Le and Adam B Jaffe, 'The Impact of R&D Subsidy on Innovation: Evidence from New Zealand Firms' (2017) 26(5) *Economics of Innovation and New Technology* 429.

> Analysing New Zealand firms' profitability in terms of productivity enhancers, we find the importance of R&D tax incentive and investment. The results indicate that the *R&D tax credit, currently planned by the new government, can improve the performance of New Zealand firms*.[22]

Several studies offer longitudinal analyses of the approaches taken to support R&D in NZ. The following discussion necessarily provides an overview only, and readers are therefore encouraged to review these studies independently for more detail.

Sawyer[23] provides the background to NZ's approach to supporting R&D up to 2005. NZ was described in the OECD's 1996 report as the OECD member providing the least R&D tax support.[24] Indeed, in the mid-2000s, NZ remained near the bottom of the OECD list. Under rules introduced in 2001, businesses were allowed a full (100 per cent) deduction for most expenditure on R&D, except to the extent that an asset is created (linking the deduction to the 'research' and 'development' concepts used in financial accounting standards). Businesses were also expected to apply tests used for financial accounting reporting purposes to determine eligible expenditure. Relevantly, the Private Sector R&D Liaison Group worked with the NZ Government to provide clear definitions of R&D. A positive outcome of this work led to clearer definitions in the *Income Tax Act 1994* (NZ) (as it then was). NZ's approach at this time, as commented by Sawyer, was to:

> … prefer R & D subsidies (or grants) over tax credits and incentives to steer research to particular goals and avoid jeopardising the neutrality of the tax system. This most recent approach of *providing grants places the New Zealand Government and officials in the role of 'picking winners', which introduces the risk that factors other than the potential future value and contribution of the R&D, such as political bias*, will be major factors in the decision-making process.[25]

Sawyer's research concluded that:

> [t]he *tax credit is also preferable in terms of incurring the lowest level of compliance costs*. Notwithstanding this evidence, the New Zealand Government and officials prefer a grants scheme, the opposite of what the research indicates is preferred by businesses.[26]

Robinson's research[27] was timely in that it provided insights collected from interviews with tax practitioners who had experienced the implementation of NZ's first tax credit scheme for R&D in 2008. Unfortunately, this scheme only lasted for one year (becoming the 'victim' of politics). Robinson examined the R&D tax credit from the perspective of a behaviour changing intervention and concluded that:

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22 Ryota Nakatani, 'Firm Performance and Corporate Finance in New Zealand' (2019) 26(13) *Applied Economics Letters* 1118, 1123 (emphasis added).

23 Sawyer (n 17).

24 OECD, 'Fiscal Measures to Promote R&D and Innovation' (General Distribution No OCDE/GD(96)165, OECD, 1996) 25–26.

25 Sawyer (n 17) 143 (emphasis added).

26 Ibid 148 (emphasis added).

27 Robinson (n 18).

> [t]he overall finding … is that the *success or failure of behaviour changing efforts cannot be assessed within a single business year*. Although there was little indication that the R&D tax credit had influenced new R&D from its introduction, the interviewees all stressed the fact that there *had not been enough time for business managers to see the financial benefits derived from this credit and to further have the funds to engage in new projects*.[28]

Robinson traversed the process by which the R&D tax credit concept was developed and eventually enacted. Relevantly, the process commenced in 2006 with a discussion document and an issues paper being released.[29] Draft legislation was subsequently introduced in 2007, and became law with effect from the 2008–2009 income year. The tax credit was subsequently repealed with the change in government following the 2008 General Election.

Robinson reported on several of the interviewee's comments:

> When asked about grant funding as another mechanic for creating R&D, responses were fairly sceptical. Grants were typically seen as a minimum level of government investment, or as an inferior substitute:
>
> 'Grants seem quite difficult to get … it seems more hit and miss … with R&D if you're undertaking R&D and it fits the statutory definition you should be eligible and so you receive an amount. But I guess with grants you have to be accepted.'
>
> A public accountant
>
> 'Grants are handouts and will always be limited in availability, whereas a tax credit places the incentive and control on the researcher who must initially fund it themselves. Nothing focuses the drive for success more than having one's own money at risk. Hence a tax credit is a far stronger mechanism for driving innovation than grants.'
>
> A public accountant
>
> 'As far as companies are concerned, if they can get a contribution for the research they're doing, great. And from that perspective if it's a grant or credit it shouldn't really matter. But it's really a question of what's the allocation method of public funds and I'm not sure that you get the best outcome with [grants] – because then you effectively have got people that know how to get the grants will get the grants and people that don't know won't get them.'
>
> A public accountant[30]

A further major finding of Robinson's study was that the success of the R&D tax credit could not be effectively evaluated as it required much longer than one year of operation in order to undertake such an evaluation. Thus, Robinson's qualitative-based approach to

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28 Ibid 5–6 (emphasis added).

29 Michael Cullen and Peter Dunne, 'Business Tax Review: A Discussion Document' (Discussion Paper, NZ Inland Revenue Department, 2006); Policy Advice Division of the Inland Revenue Department and the New Zealand Treasury, 'R&D Tax Credits: An Officials' Issues Paper on Matters Arising from the Business Tax Review' (Issues Paper, NZ Inland Revenue Department, 2006).

30 Robinson (n 18) 37–38.

his research was the only feasible method with the absence of longitudinal quantitative data.

A recent review of NZ's R&D tax incentives and grants was undertaken by Afram in 2016.[31] Afram applied Adam Smiths' principles or cannons of taxation (equity, certainty, convenience and efficiency),[32] as a criteria to evaluate: the one year R&D tax credit; the more recent cashing out of losses; and, the Callaghan Innovation administered grants. Her analysis ranked the tax credits and cashing out of tax losses from R&D activities as superior to the grants approach.

A common theme throughout these studies is the significant role that political interventions have had in shaping R&D incentive policy, including a number of undesirable side effects, such as creating uncertainty and resource wastage. Against this background, the next Part will proceed to review these political interventions and their corresponding impact.

III FISCAL SUPPORT FOR R&D: A HOSTAGE TO POLITICS?

The following subsections provide evidence suggesting that R&D incentives, whether provided through the tax system or as grants, are a 'political football', 'kicked around' by various governments as they seek to increase R&D investment

A *R&D Tax Incentives: A Political Football?*

As indicated in the previous section, NZ's government policy with respect to R&D incentives has changed dramatically on numerous occasions over the last twenty years. This has created a great deal of uncertainty for businesses, and has done little to advance NZ's position on the OECD table in terms of its investment in R&D activities (especially private sector investment).

As discussed earlier, until the later part of the 2000s, NZ's principal approach was to allow full deductibility of R&D expenditure that met criteria specified in tax legislation and in financial accounting standards. As areas of black hole expenditure were identified, legislative clarifications were made in most instances to ensure the expenditure was deducible for tax purposes. Rather than providing direct support through the tax system, as recommended by private sector organisations, researchers and businesses themselves, the elected NZ government persevered with a grants-based system (through Callaghan Innovation – see the discussion in the next subsection), deciding that it (and officials) were best placed to 'pick winners'. Relevant research reveals that this approach has been insufficient at boosting investment in R&D activities; see Part III B below.

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31 Dina Afram, 'A Review of New Zealand's Past & Current R&D Incentives and How They Reflect Adam Smith's (1776) Principles of Good Taxation: An Exploratory Study' (MCom Thesis, University of Canterbury, 2016).

32 See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (London: Methuen, 1950 edition).

The first significant change was the introduction of the 15 per cent tax credit with effect from the 2008–2009 income year by the then Labour-led Government. This credit was aimed at incentivising NZ businesses to invest in R&D in order to correct an under-investment trend, stimulate the economy, improve productivity and raise international competitiveness. It was also seen as an opportunity to bring NZ in line with countries who already offered tax incentives for R&D — especially Australia's 125 per cent accelerated deduction. The legislation, set out in subpart LH of the *Income Tax Act 2007* (NZ) ('*ITA 2007*'), effectively provided NZ businesses with a 15 per cent tax credit on eligible expenditure. As indicated by Robinson, this scheme was largely supported by advisers to businesses that invested in R&D activities.[33]

Following the change of government in November 2008, the R&D credit was repealed from the 2009–2010 income year onwards. The reasoning given by the National-led Government (which would usually be seen as pro-business), was to fund its preferred tax regimes involving personal income tax cuts. The National-led Government claimed that it was appropriate to cease the R&D tax credit as it was unclear whether new R&D would be developed. If so, then the credit was simply rewarding R&D that would have been conducted irrespective of the credit. Important questions needed to be answered at that point in time, such as 'had businesses been responding to the credit by engaging in new R&D, or did they, perhaps, simply reclassify other expenditure that could qualify for the credit?' Whatever the case was, abolishment of the credit meant that these propositions could never be effectively tested. Furthermore, a one-year period is far too short to evaluate the effectiveness of the tax credit or otherwise. In effect, the National-led Government had 'answered' its questions without allowing time to determine whether they were correct.

Nothing of significance happened in the R&D space (other than further clarifications concerning black hole expenditure) until 2015 when the National-led Government became convinced that the current grants-based scheme was not supporting new businesses. This view presented no surprise to those that understood the importance of fiscal stimulus to encourage investment in R&D activities.

Accordingly, legislation was enacted to allow start-up companies engaging in intensive R&D activities to 'cash out' their tax losses for R&D expenditure. The Taxation (Annual Rates for 2015–2016, Research and Development, and Remedial Matters) Bill 2015 was enacted on 24 February 2016 with effect from the 2015–2016 income year. Under this scheme, R&D start-up companies were able to receive a payment for up to 28 per cent (the company tax rate) of their tax losses from R&D expenditure in any given year. To be eligible, the company had to be a loss-making company resident in NZ, with a sufficient proportion of labour expenditure on R&D. Relevantly, R&D expenditure eligible for the measure was more restricted than the R&D expenditure that is deductible under sections DB 34 and DB 35 of the *ITA 2007*. The amount of losses that could be cashed out were initially capped at NZD500,000 for the 2015–2016 year and increased by NZD300,000 over the following five years, to NZD2 million. This scheme remains in place.

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[33] See Robinson (n 18).

In a Special Report on the legislation issued by Inland Revenue ('IR'), the following comment was made:

> A cashed-out loss can be thought of as an interest-free loan from the Government to be repaid from the taxpayer's future income; it is intended to provide a cash flow timing benefit only. In economic terms, repayment of cashed out losses will occur when a taxpayer pays tax on net income that would otherwise have been sheltered by the cashed out losses. An earlier repayment will also be triggered in certain circumstances. Triggers for the early repayment of amounts cashed out include the sale of research and development assets, liquidation or migration of the company, and the sale of the company. The early repayment will be effected via a new R&D repayment tax. Where a cashed out loss is required to be repaid early, a new deduction will reinstate the loss, which will be available to offset future income.[34]

Thus, this cashing out of losses is effectively a repayable loan once the company becomes profitable and pays tax (similar in some respects to student loans for tertiary study, albeit there is a greater impact on wellbeing of the debt holder).[35] With its very limited application, this measure would be welcomed by some businesses but is not relevant to most involved in R&D activities.

With a change in government following the 2017 General Election, the new Labour-led Government was quick to reintroduce a tax credit, based initially on its earlier 2008–2009 regime, albeit with some differences that emerged through the consultation process. Concurrently, the new government announced that its goal was to increase total R&D as a percentage of GDP to 2 per cent (from the then 1.25 per cent). In order to reach this target, a significant amount of growth was expected to come from NZ business expenditure on R&D. The R&D tax incentive (effectively a tax credit) was the primary mechanism for achieving this target. In the Impact Statement accompanying the proposal, the Labour-led Government observed:

> New Zealand currently delivers R&D subsidies to businesses through Callaghan Innovation. The bulk of these subsidies are delivered through Growth Grants to firms that have stable, high-intensity R&D programmes. However, *these grants are unavailable to the large majority of firms that are currently undertaking R&D or may undertake R&D in the future.* While these remaining firms can obtain Project Grants, these are targeted at a specific type of R&D expenditure and involve significant compliance/transaction costs (i.e., expenditure of time and resources) for firms.[36]

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[34] Inland Revenue, '*Cash Out' of Research and Development Tax Losses: A Special Report* (Report, April 2016) 2 (emphasis added).

[35] For an overview of the impact of student loans repayments on wellbeing, see Sylvia Nissen, Bronwyn Hayward and Ruth McManus, 'Student Debt and Wellbeing: A Research Agenda" (2019) 14(2) *Kōtuitui: New Zealand Journal of Social Sciences Online* 245.

[36] See Megan Woods and Stuart Nash, 'Coversheet: Research & Development Tax Incentive' (Impact Statement, 2017) 2 <https://www.mbie.govt.nz/dmsdocument/1258-research-and-development-tax-incentive-regulatory-impact-statement> (emphasis added). This statement was supported by personnel from MBIE, The Treasury and Inland Revenue. Inland Revenue subsequently issued a series of briefing papers; see Inland Revenue, *Research and Development Tax Credit: Policy Reports and Briefing Notes* (September 2018). See also, Inland Revenue, *Research and Development Tax Incentive:*

The new tax credit was initially expected to cost the government NZD1.02 billion for each of the first four years, over and above the NZD0.53 billion on grants paid through Callaghan Innovation. Growth Grants (the current funding mechanism via Callaghan Innovation) for business R&D would be phased out with the introduction of the R&D tax credit. The *Taxation (Research and Development Tax Credits) Act 2019* (NZ) amended the *ITA 2007*, along with other statutes, with specific provisions for the 2020 income year and new provisions for 2021 and subsequent years.

As part of a transition, in order to reduce the risk of uncertainty and reduction in business expenditure on R&D, the NZ Government would:

- Educate and develop appropriate guidelines to enable businesses to understand how to claim the R&D tax credit;
- Allow a transition period of two years during which existing Growth Grant recipients may continue to claim a Growth Grant through Callaghan Innovation (instead of the R&D tax credit);[37]
- Provide clear information on transition arrangements for Growth Grant recipients to ensure a smooth transition to the R&D tax credit that supports businesses to maintain and grow their R&D over time; and
- Develop an appropriate implementation strategy to ensure the successful uptake of the R&D tax credit.

Another risk of the R&D Tax Incentive (tax credit) is re-characterisation of 'business-as-usual' expenditure. This risk would be managed by:

- A robust definition of eligible R&D for taxation (and other relevant) legislation to create a clear boundary between R&D and non-R&D expenditure; and
- Audit of claims, including in-year approval of the R&D.

Other types of grants provided by Callaghan Innovation will remain, leaving a mix of tax credits, cashing out of losses and grants approaches to stimulate investment in R&D activities. While initially proposed to be 12.5 per cent, submissions received during the consultation process encouraged to the NZ Government to accept that the rate should be 15 per cent, which is a welcome outcome showing the importance of engaging in the consultation process.

In order to claim the credit, the business must first determine if it is an eligible person (as defined in the legislation), whether the activities will be considered an eligible R&D activity (as defined in the legislation), whether the expenditure is eligible for the credit, as well as taking into account practical considerations, such as registration with IR and providing a supplemental R&D return following filing of their tax return. The process for

Guidance (May 2019), which provides in-depth guidance and a series of useful flowcharts that explain the core aspects of the new tax credit incentive.

37 See further material provided by Callaghan Innovation, *Managing the Transition from Growth Grants to the R & D Tax Incentive* (2019).

year one of the regime (which ends 31 March 2020 for most taxpayers) is transitional, with a change in process for the subsequent years (assuming the scheme remains if there is a change in government following the 2020 General Election). In essence, IR is the gatekeeper for approving expenditure that leads to the granting of the R&D tax credit.[38]

The enactment of the *Taxation (Research and Development Tax Credits) Act 2019* (NZ) is not the latest development in this area. The Taxation (KiwiSaver, Student Loans and Remedial Matters) Bill 2019 (the '2019 Bill'), currently before the Finance and Expenditure Select Committee ('FEC'), proposes further changes to the new tax credit. The Commentary to the 2019 Bill states that:

> The Bill *proposes an amendment to make refundable R & D tax credits available to more firms*. It is proposed that the existing corporate eligibility criteria, wage intensity test, and $255,000 cap be removed and replaced with a payroll-tax based cap. It is also proposed that entities that derive tax exempt income (other than levy bodies, and claimants that only receive exempt income from certain intercompany and foreign dividends) be ineligible for the R & D tax credit.
>
> […]
>
> The Bill also proposes an amendment to allow the Commissioner to adjust a person's R & D tax credit claim upwards if the person has initiated the disputes process through issuing a notice of proposed adjustment (NOPA) within four months of filing their income tax return or a year after their income tax return due date.[39]

Furthermore, there is a proposed amendment to prevent a person from challenging the Commissioner of Inland Revenue's decisions made for the pilot approval scheme and expenditure exceeding the NZD120 million cap. Other changes proposed relate to R&D Certifiers, and adjustments for joint ventures involved in R&D investment activities.

This is not a complete story concerning the political nature of R&D support — the Callaghan Innovation administered grants schemes also need to be reviewed, as discussed in the next subsection.

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[38] Inland Revenue, at the time of writing, is developing a form of advice notification, potentially similar to the new short process rulings, for those businesses seeking approval of their R&D expenditure for the tax credit. Short process rulings are a mechanism for individuals and organisations, with an annual gross income of NZD20 million or less, to apply for a binding ruling on how a tax law applies to a situation (any joint applicants must each have an annual gross income of NZD20 million or less). Such rulings are likely to be suitable for most commercial arrangements or business transactions that may have an uncertain tax treatment. However, IR may decline to make as ruling. A short process ruling is confidential to the applicants named in the ruling. If a person chooses to follow the ruling, IR is bound by it, providing the information the person provided IR is correct and complete. A short process ruling will take about 6 weeks and costs NZD2,000 (including GST). This needs to be paid when a person submits their application. A tax invoice will be issued to the main applicant.

[39] Stuart Hash, *Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill: Commentary on the Bill* (June 2019) 27, 36 (emphasis added). For further discussion see Virginia Ginnane, 'R&D Tax Incentive: Refundable Tax Credits Extended to More Businesses' (2019) *Taxation Today* (September) 4–5.

B *Callaghan Innovation: A Focus on 'Picking Winners' Through the Provision of Grants*[40]

Callaghan Innovation was established following a June 2012 NZ Cabinet decision to create an advanced technology institute ('ATI') with the main objective to support science and technology-based innovation and its commercialisation by businesses, primarily in the manufacturing and services sectors, in order to improve the growth and competitiveness of these business. In December 2012, legislation was finally enacted establishing the organisation as a new statutory Crown entity.[41] The new organisation, with the permanent name of Callaghan Innovation, commenced operations from 1 February 2013, and is located in the Auckland, Wellington (including the Hutt Valley) and Canterbury regions.[42]

As an ATI, Callaghan Innovation initially employed 320 scientists from Industrial Research Limited ('IRL'), a Crown Research Institute ('CRI') that was disestablished as Callaghan Innovation was established. Callaghan Innovation also administers the Ministry of Business, Innovation and Employment's ('MBIE's') co-funded research portfolio.

Callaghan Innovation offers four types of grants to NZ businesses: student grants; start-up grants; project grants; and, growth grants. Student Grants are available for NZ-based businesses that want to:

- Access NZ undergraduate and postgraduate students who can assist them in their R&D projects;
- Gain access to the latest thinking and fresh talent at minimal cost;
- Train and mentor a future employee for them or the sector; and
- Build links with New Zealand universities.

The types of *Student Grants* are detailed below.

- R&D Experience Grant: A 10-week internship designed as work experience during the student's summer break or at completion of the student's study. The student is expected to help the business with an R&D project. The grant is available for only part of the year.
- R&D Fellowship Grant: Designed to provide funding support for students to undertake a PhD, or the research component of a master's degree, which is aimed at solving a technical or scientific problem for the business. The business will

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40 Most of the details are taken from information on the Callaghan Innovation website: see *Callaghan Innovation* (Website, 2020) <https://www.callaghaninnovation.govt.nz>.

41 See *Callaghan Innovation Act 2012* (NZ).

42 See Callaghan Innovation, 'About Us – Publications and Documents' (Web Page, 2020) <https://www.callaghaninnovation.govt.nz/about-us/publications-and-documents>. In its April/May 2016 newsletter, NZ Institute of Food Science and Technology Careers reports on the success of two tertiary students working under a student grant over the summer of 2015–2016: see 'Undergraduates Gain Experience Through Callaghan Innovation R&D Experience Grants', *Food New Zealand* (April/May 2016) 40–41.

receive access to the latest thinking and knowledge through the student's university supervisor and build ongoing links between the business and the university. The grant is available year-round.

- R&D Career Grant: An internship designed to bridge the first six months of employment — providing work experience for recent PhD or masters graduate students. The student is expected to help businesses with an R&D project. The grant is available year-round.

Getting Started Grants are available for NZ-based businesses that want to:

- Launch their R&D activities to create a competitive edge;
- Navigate through R&D roadblocks — whether troubleshooting, basic prototyping, project planning, technical feasibility studies, development of an Intellectual Property strategy or determining product specifications and user requirements; and
- Access technical expertise to support businesses to take their development in the right direction.

A business that is successful with this type of grant will:

- Receive 40 per cent of their eligible R&D project costs, up to NZD5,000 (based on a quotation);
- Only receive funding for R&D undertaken in NZ; and
- Receive a one-off payment upon completion of the project.

For *Project Grants*, in addition to strict application criteria, these grants are designed to help businesses:

- Build their R&D expertise by giving the business an opportunity to push the boundaries and uncover new scientific or technical knowledge and understanding;
- Break new ground in an R&D project for the development of new or substantially improved devices, products, processes, systems or services;
- Develop the business into a stable and substantial R&D performer; or
- Grow their investment in R&D.

The business will:

- Typically receive 40 per cent of their eligible R&D project costs, reducing for large projects, or when the business has had multiple grants;
- Only receive funding for R&D done in NZ (unless pre-approved to be conducted elsewhere); and
- Receive payment in arrears (monthly or quarterly).

For *Growth Grants* (which are currently being phased out in line with the new R&D tax credit),[43] their objective is to increase NZ businesses' investment in R&D to support long-term economic growth. These grants are intended to be a rules-based, market led incentive for increasing R&D investment in businesses that are experienced in investing in R&D. To have eligible R&D expenditure the business must have:

- Incurred expenditure on an eligible R&D activity; and
- The expenditure must not be in the list of general or specific inclusions.

Relevantly, the guidelines are based on the ministerial direction but include additional clarification. Businesses are encouraged to discuss any matters with Callaghan Innovation directly in order to ensure they know what activities are eligible for financial support.

Callaghan Innovation's operations have not all been 'plain sailing'. In 2014, Callaghan Innovation was a recipient of 'the Accomplice Award', after it was discovered it had been providing grants for R&D to transnational companies, many of which were operating from tax havens.[44] This is an excellent example of the challenges in allowing an institution to determine grant recipients when the process lacks full and transparent robustness checks.

In an evaluation of Callaghan Innovation reported in 2015,[45] a significant problem perceived by interviewees was the focus of R&D funding on product innovation followed by a lack of funding to support later stage commercialisation of products. This later stage of product and market development is excluded from Callaghan Innovation co-funding. As a consequence, this leads to a 'prototypes-on-a-shelf' approach. Applicants also found the process time consuming, due to the complexity of the application questions, as well as delays in receiving timely responses from the funding network of regional funding partners and the government ministry. Concerns over the use and role of consultants were also expressed by applicants. It should be noted that this study was conducted during the establishment period of the organisation.

What can be said moving forward? The next subsection attempts to provide some 'crystal ball' insights into the immediate future for relevant R&D incentives.

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43 Callaghan Innovation provides guidance as to how the transitional process works: see Callaghan Innovation, 'R&D Tax Incentive' (September 2019) <www.callaghaninnovation.govt.nz/grants/rd-tax-incentive>.

44 See *The Roger Award 2014* (Web Page, 2015) <http://canterbury.cyberplace.org.nz/community/CAFCA/pdf/roger-award-2014.pdf>.

45 Nick Kearns and William Beale, 'Show Me the Money: Perspectives on Applying for Government Research and Development Co-Funding' (Discussion Paper No 2, 2015) <https://www.unitec.ac.nz/epress/wp-content/uploads/2015/10/Show-Me-The-Money_Perspectives-on-Applying-for-Government-Research-Development-and-Co-funding-by-Nicks-Kearns-and-William-Beale.pdf>.

C *What About the Immediate Future?*

As at the time of writing, the above discussion reflects the state of play with respect to the political football of R&D incentives, focusing on government utilisation (or otherwise) of the tax system to deliver its fiscal support. The current scheme, at the time of writing, is nearing the end of its first transitional year of operation. From April 2020 the full regime comes into play, with the role of Callaghan Innovation reducing as the Growth Grants it administers are fully phased out by the end of the 2021 income year.

What is clear is that businesses cannot expect certainty through continuance of any particular R&D incentive scheme, given the frequent changes that are experienced following each change in government. As a consequence, NZ's R&D performance continues to be hampered and it will be some time, if at all, that the current government's goal of 2 per cent of GDP being invested into R&D activities eventuates. An abundance of irreplaceable experience, and sizable compliance and administrative costs were incurred, for the single year 2008–2009 tax credit scheme. The current scheme cannot be allowed to suffer a similar fate; however, only time will tell.

While it is not possible, as at the time of writing, to predict the outcome of the next general election, many pollsters are forecasting that a Labour-led Government will be returned, notwithstanding that the National Party has the most support of any party in this polling. Should this eventuate, then the risk of significant change to the R&D tax credit regime is low, assuming NZ's economy does not go into recession. With a change to a National-led Government, based on past form, the risk of intervention cannot be ruled out. In order to give NZ businesses a reasonable chance to increase their investment in R&D, and to evaluate the success of the regime, any 'tinkering' should be avoided other than to make remedial changes to support the intention of the R&D tax credit regime. Political party manifestos could make for interesting reading in later 2020.

IV CONCLUDING REMARKS

This paper sought to traverse approximately twenty years of government-based support, or otherwise, for encouraging R&D investment in NZ. It notes that following a very timid approach up to the early 2000s of clarifying what expenditure is deductible for tax purposes (including reducing black hole expenditure), efforts were made to introduce targeted grants. Here officials, through a government agency, would be charged with 'picking winners' by allocating various types of grants while following specified criteria. Like most types of research funding in NZ, the environment is one that encourages competitive applications for funding from a limited pool of available funds, underpinned by a neoliberal philosophy. Notably, NZ does not have a comprehensive CGT regime (where capital losses can be offset against capital gains) and there are no indications that a CGT regime will be revisited for the foreseeable future.[46]

[46] See further the Tax Working Group's Final Report recommending a CGT and the NZ Government's response: see Robertson and Nash (n 12).

More generally, empirical evidence is vital to assessing the outcomes from R&D inputs, including funding, with 'politics' having a significant influence on innovation funding. Relevantly, Sarnoff observes that:

> … scholars and policy makers lack substantial amounts of empirical information regarding the outputs to R&D inputs that would help to determine what innovation-funding form choices work best in particular situations for desired innovation goals. Theories of innovation funding are highly dependent on such missing information. Even if we obtained the missing information and revised these theories in light of it, *the political economy of innovation funding would cause us routinely to deviate from what our theory suggests would work best to achieve specific goals*.[47]

Following work undertaken for the Royal Society of NZ, subsequently published by Sawyer in 2005,[48] along with other researchers, the pressure to improve NZ's low ranking in the OECD for R&D investment as a percentage of GDP increased to the point that government action was taken. This led to the Labour-led Government's ill-fated one-year tax credit for the 2008–2009 year which was subsequently repealed by the incoming National-led Government. We will never be able to assess whether this scheme would have increased R&D investment significantly due to its short lifespan. As observed by Robinson, this was a lost opportunity.[49] Grants then remained the main source of funding, along with provision from 2016 for enabling new firms with tax losses due to R&D investment to cash out those losses by way of a government loan, repayable when they became profitable and paid income tax. Neither the grants or the cashing out of losses were options for supporting most R&D activities by established business, so further support was needed.

Accordingly, with the incoming Labour-led Government in 2017, the second tax credit scheme was developed, with application from the 2019–2020 income year. Similar to its predecessor, this scheme supports a broad range of businesses and is the main mechanism to meet the current Government's goal of R&D expenditure being 2 per cent of GDP. Phasing out of the *Growth Grants,* administered by Callaghan Innovation, is occurring, which places greater emphasis on tax credits to stimulate R&D investment. At this stage, it is too early to evaluate the effectiveness of this new tax credit incentive, including whether it will move NZ's investment in R&D activities close to the NZ Government's target of 2 per cent of GDP. One possible challenge to its continued existence will be the outcome of the forthcoming September 2020 General Election should there be a change to a National-led Government.

Ultimately, this paper sought to respond to its research question and determine whether one could learn from NZ's political intervention experience with intervening to encourage

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47 Joshua Sarnoff, 'The Likely Mismatch Between Federal Research & Development Funding and Desired Innovation' (2016) 18(2) *Vanderbilt Journal of Entertainment & Technology Law* 363, 417 (emphasis added).

48 Sawyer (n 17).

49 Robinson (n 18).

investment in R&D activities. As noted above, this necessitated an in-depth exploratory case study analysis of the support provided by government to R&D investment in NZ.

What this analysis reveals is that R&D incentives have been highly political, and 'kicked around' by various governments as they prioritise their tax policies and approach to encouraging R &D investment. One major takeaway is that the matter of R&D incentives is too important to leave to the whim of politicians. Such incentives are vital to the success of what is colloquially referred to as 'New Zealand Inc.', and in this regard any change should require political consensus based upon independent analysis and input from officials, economists and tax experts. Perhaps a minimum period of operation is necessary before any significant change is made to allow sufficient time for review and analysis. A major challenge lies in receiving cross party support for the legislation. Both possibilities are unlikely given that one Parliament is unable to bind another in legislative terms and philosophically, the two major parties appear to remain divided over R&D investment support. This paper's analysis suggests that the political efforts to date have done little to support economic growth through enhanced investment in R&D activities. In many respects they have served to hinder rather than foster, especially for smaller businesses. In essence, the biggest concern is a lack of stability and certainty for businesses.

This paper has a number of limitations. First, at the time of writing, the latest regime is approximately one year into its operation and it is therefore too early to evaluate its effectiveness. Furthermore, if there should be a change in government at the next general election, then what might occur? Second, this paper takes an outsider's perspective; the author is not part of the political decision-making process, nor is an official that has access to confidential information and data. Third, and more generally, NZ's absence of a CGT regime may in fact serve as a 'hand brake' on the level of investment in R&D activities, as capital losses are unable to be offset against any form of (capital) gain.

In terms of future research, an evaluation of the latest scheme in two to three years would enable a preliminary comment on its effectiveness in moving NZ closer to the current Government's R&D target of 2 per cent of GDP. Importantly, just prior to the last General Election in 2017, Labour Party leader Jacinda Ardern, stated that the neoliberal model has 'failed' and needs to be changed.[50] While there is little evidence of this intervention to date, we may see announcements of specific interventions in the lead up to, or following the next general election, depending on the outcome. More specifically, following the 2020 General Election, analysis of whether NZ has the right mix of support (grants, cashing out of losses and tax credits) can be undertaken.

[50] Henry Cooke, 'Jacinda Ardern Says Neoliberalism has Failed', *Radio New Zealand* (17 September 2017) <https://www.stuff.co.nz/national/politics/96739673/jacinda-ardern-says-neoliberalism-has-failed>.

REFERENCES

A *Articles/Books/Reports*

Benade, Leon, Nesta Devine and Georgina Stewart, 'The 2019 PBRF Review: What's to be Done?' (2019) 54 *New Zealand Journal of Educational Studies* 225

Bowler-Smith, Mark, 'New Zealand National IFA Branch Report: Tax Incentives on Research and Development' (2014) 100a *Cahiers de Droit Fiscal International*

Cooke, Henry, 'Jacinda Ardern Says Neoliberalism has Failed', *Radio New Zealand* (17 September 2017) <https://www.stuff.co.nz/national/politics/96739673/jacinda-ardern-says-neoliberalism-has-failed>

Deakins, David, David North and Jo Bensemann, 'Paradise lost? The Case of Technology-Based Small Firms in New Zealand in the Post-Global Financial Crisis Economic Environment' (2015) 17(1-2) *Venture Capital* 129

Evans, Chris and Richard Krever, 'Taxing Capital Gains: A Comparative Analysis and Lessons for New Zealand' (2017) 23(4) *New Zealand Journal of Taxation Law and Policy* 486

Freebody, Kelly, Molly Mullen, Amber Walls and Peter O'Connor, 'Who is Responsible? Neoliberal Discourses of Well-Being in Australia and New Zealand' (2018) 42(2) *NJ Drama Australia Journal* 139

Ginnane, Virginia, 'R&D Tax Incentive: Refundable Tax Credits Extended to More Businesses' (2019) *Taxation Today* (September)

Guceri, Irem and Li Lu, 'Effectiveness of Fiscal Incentives for R&D: Quasi-Experimental Evidence' (2019) 11(1) *American Economic Journal: Economic Policy* 266

Joyce, Steven and Judith Collins, *Black Hole and Feasibility Expenditure: A Government Discussion Document* (Inland Revenue, May 2017)

Le, Trinh and Adam B Jaffe, 'The Impact of R & D Subsidy on Innovation: Evidence from New Zealand Firms' (2017) 26(5) *Economics of Innovation and New Technology* 429

Minford, Lucy and David Meenagh, 'Testing a Model of UK Growth: A Role for R&D Subsidies' (2019) 82 *Economic Modelling* 152

Nakatani, Ryota, 'Firm Performance and Corporate Finance in New Zealand' (2019) 26(13) *Applied Economics Letters* 1118

Nissen, Sylvia, Bronwyn Hayward and Ruth McManus, 'Student Debt and Wellbeing: A Research Agenda" (2019) 14(2) *Kōtuitui: New Zealand Journal of Social Sciences Online* 245

Sadiq, Kerrie and Adrian Sawyer, 'New Zealand's "Experience" with Capital Gains Taxation and Policy Choice Lessons from Australia' (2019) 16(2) *e-Journal of Tax Research* 362

Sarnoff, Joshua, 'The Likely Mismatch Between Federal Research & Development Funding and Desired Innovation' (2016) 18(2) *Vanderbilt Journal of Entertainment & Technology Law* 363

Sawyer, Adrian, 'Reflections on Providing Tax Incentives for Research and Development: New Zealand at the Cross Roads' (2005) 8(1) *Journal of Australian Taxation*, 111

Smith, Adam, *An Inquiry into the Nature and Causes of the Wealth of Nations* (London: Methuen, 1950 edition)

Svoboda, Petr, 'The Impact of Tax Incentives on Research and Development' (2017) 65(2) *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* 737

Yin, Robert K, *Case Study Research and Applications: Design and Methods* (Sage Publications, 6th ed, 2017)

B *Legislation*

Callaghan Innovation Act 2012 (NZ)

Income Tax Act 2007 (NZ)

Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Bill

Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill 2019 (NZ)

Taxation (Research and Development Tax Credits) Act 2019 (NZ)

C *Other*

Afram, Dina, 'A Review of New Zealand's Past & Current R&D Incentives and How They Reflect Adam Smith's (1776) Principles of Good Taxation: An Exploratory Study' (MCom Thesis, University of Canterbury, 2016)

Appelt, Silvia, Matej Bajgari, Chiara Criscuoloi and Fernando Galindo-Ruedai, 'R&D Tax Incentives: Evidence on Design, Incidence and Impacts' (Policy Paper No 32, OECD Science, Technology and Industry, 10 September 2016)

Barker, Andrew, 'Improving Productivity in New Zealand's Economy' (Working Paper No 1419, OECD Economics Department, 2017)

Callaghan Innovation (Website, 2020) <https://www.callaghaninnovation.govt.nz>

Callaghan Innovation, 'About Us – Our Role' (Web Page, 2020) <https://www.callaghaninnovation.govt.nz/about-us/our-role>

Callaghan Innovation, 'About Us – Publications and Documents' (Web Page, 2020) <https://www.callaghaninnovation.govt.nz/about-us/publications-and-documents>

Callaghan Innovation, *Managing the Transition from Growth Grants to the R & D Tax Incentive* (2019)

Callaghan Innovation, 'R&D Tax Incentive' (September 2019) <www.callaghaninnovation.govt.nz/grants/rd-tax-incentive>

Cullen, Michael and Peter Dunne, 'Business Tax Review: A Discussion Document' (Discussion Paper, NZ Inland Revenue Department, 2006)

Hash, Stuart, *Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill: Commentary on the Bill* (June 2019)

Inland Revenue, '*Cash Out' of Research and Development Tax Losses: A Special Report* (Report, April 2016)

Inland Revenue, *Research and Development Tax Credit: Policy Reports and Briefing Notes* (September 2018)

Inland Revenue, *Research and Development Tax Incentive: Guidance* (May 2019)

Kearns, Nick and William Beale, 'Show Me the Money: Perspectives on Applying for Government Research and Development Co-funding' (Discussion Paper No 2, 2015) <https://www.unitec.ac.nz/epress/wp-content/uploads/2015/10/Show-Me-The-Money_Perspectives-on-Applying-for-Government-Research-Development-and-Co-funding-by-Nicks-Kearns-and-William-Beale.pdf>

Marcetic, Branko, 'New Zealand's Neoliberal Drift', *Jacobin* (Article, 2016) <https://www.jacobinmag.com/2017/03/new-zealand-neoliberalism-inequality-welfare-state-tax-haven/>

Neubig, Tom, Fernando Galindo-Rueda, Silvia Appelt, Chiara Criscuolo, and Matej Bajgar, 'Fiscal Incentives for R&D and Innovation in a Diverse World' (Working Paper No 27, OECD Taxation, 13 September 2016)

New Zealand Government, 'Research and Development Survey: 2018' (Web Page, 28 February 2019) <https://www.stats.govt.nz/information-releases/research-and-development-survey-2018>

Organisation for Economic Co-operation and Development ('OECD'), 'Gross Domestic Spending on R&D' (Web Page, 2020) <https://data.oecd.org/rd/gross-domestic-spending-on-r-d.htm>

OECD, 'Fiscal Measures to Promote R&D and Innovation' (General Distribution No OCDE/GD(96)165, OECD, 1996)

Policy Advice Division of the Inland Revenue Department and the New Zealand Treasury, 'R&D Tax Credits: An Officials' Issues Paper on Matters Arising from the Business Tax Review' (Issues Paper, NZ Inland Revenue Department, 2006)

Robertson, Grant and Stuart Nash, 'Govt Responds to Tax Working Group Report' (Media Release, New Zealand Government, 17 April 2019) <https://www.beehive.govt.nz/release/govt-responds-tax-working-group-report>

Robinson, Alex, 'The Rise and Fall of R&D Tax Credits in New Zealand: The Practitioner's Perspective' (BCom Thesis, University of Canterbury, 2009)

Royal Society of New Zealand, 'Marsden Fund' (Web Page, 2020) <https://www.royalsociety.org.nz/what-we-do/funds-and-opportunities/marsden>

Spinova, Hanna and Theodoros Rapanos, 'R&D Tax Incentives: Do R&D Tax Incentives Stimulate Innovations and Economic Growth? Evidence of OECD Countries' (Working Paper, Södertörns högskola, Institutionen för Samhällsvetenskaper, 18 January 2019)

Tertiary Education Commission, 'Performance Based Research Fund' (Web Page, 2020) <https://www.tec.govt.nz/funding/funding-and-performance/funding/fund-finder/performance-based-research-fund/>

Woods, Megan and Stuart Nash, 'Coversheet: Research & Development Tax Incentive' (Impact Statement, 2017) <https://www.mbie.govt.nz/dmsdocument/1258-research-and-development-tax-incentive-regulatory-impact-statement>

EQUITY IN ACCESS TO EMPLOYER-ASSISTED HOUSING IN PAPUA NEW GUINEA: EMPIRICAL ANALYSIS AND POLICY IMPLICATIONS

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ABSTRACT

This study examines equity in access to two types of housing benefit — direct housing provision and rental allowances — available in urban Papua New Guinea. The characteristics of those who receive such benefits are identified while considering housing fringe benefit discrimination as a form of wage discrimination. The study investigates what policy level indicators are predictive of access to benefits and further examines key interactions between these predictors, employing novel individual level data from a multi-site survey of formal sector employees. The findings support modified policy interventions focussed on equitable taxation, residential land release, social housing and private ownership incentives that target the improvement of access to housing for disadvantaged groups.

Keywords: housing affordability, housing provision, employer benefits, housing allowances, taxation, Papua New Guinea

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I INTRODUCTION

Urban Papua New Guinea ('PNG') suffers from one of the highest housing rent-to-income ratios in the world,[1] where historical and structural factors that limit private ownership contribute to extreme housing scarcity. Scarcity of affordable housing, especially in the metropolitan cities of Port Moresby and Lae, has led to the development of sprawling 'squatter' settlements which are home to not only the poor and unemployed, but to a diverse cross-section of PNG's society of varying socio-economic means. These illegal settlements often lack access to basic government services, infrastructure for clean water and sanitation, and fail to provide long-term security of settlement with forced evictions commonplace.[2] Furthermore, the settlements often suffer from high levels of formal sector unemployment (up to 60 per cent), resulting in a thriving informal sector infiltrated by organised violent crime that is perpetrated by 'raskol' gangs.[3] Ongoing expansion of such squatter settlements, driven by the lack of access to both land and affordable housing stock, continue to sow seeds of future social and economic inequity as well as present barriers to long-term economic development within PNG.[4]

In the formal sector, the high tangible and intangible cost of housing in PNG had traditionally incentivised both public and private institutions to provide housing benefits to employees as part of their remuneration.[5] Such fringe benefits take the form of either a housing allowance (cash assistance) or a direct provision of accommodation (owned or rented by the employer), the latter of which is concessionally taxed. As the pace of urbanisation has quickened, the value of existing dwellings has risen exponentially.[6] As a consequence, access to housing benefits now imparts substantial value transfers to those lucky enough to receive them, not just in terms of a fringe benefit in equivalent rental value but also in utility of access to security, government services and essential infrastructure.

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1 Belden Endekra, Flora Kwapena and Charles Yala, 'Understanding Property Price Movements in Port Moresby: Lessons from a Price Tracking Experiment' (Issues Paper No 14, National Research Institute, 2015). Eugene Ezebilo, 'Evaluations of House Rent Prices and Their Affordability in Port Morseby' (2017) 7(4) *Buildings* 114 ('Evaluation of House Rent Prices').

2 United Nations Human Rights Office of the High Commissioner, 'Housing Rights Assessment Mission to Papua New Guinea' (Report, 31 December 2010) <https://pacific.ohchr.org/docs/PNG_Housing Rights Mission Report 2010_July2011.doc>.

3 Ezebilo, 'Evaluation of House Rent Prices' (n 1).

4 Thomas Wangi, Justin Ondopa and Eugene Ezebilo, 'Housing Allowance for Public Servants in Papua New Guinea: Does it Meet Housing Affordability Criteria?' (2017) 10(3) *National Research Institute Spotlight* 1. Ron Mahabir et al, 'The Study of Slums as Social and Physical Constructs: Challenges and Emerging Research Opportunities' (2016) 3(1) *Regional Studies* 399.

5 Sababu Kaitilla and William Sarpong-Oti, 'Employer-Provided Housing in Papua New Guinea: Its Impact on Urban Home Ownership in the City of Lae' (1993) 17(4) *Habitat International* 59 ('Employer-Provided Housing in PNG').

6 Ibid.

The justification for a government decision made in 2017 to increase the housing benefit tax present in PNG in order to address equity issues provides the original motivation for this study. These changes were deemed necessary in order to keep up with the appreciation of housing costs and rents over the years. Therefore, in order to also increase the taxable component of employer-provided housing benefits, the government introduced two very expensive property valuation tiers for upmarket and high-cost houses to specifically target affluent and high-income earners.[7] In addition, modest accommodation previously assessed as low or medium cost were thenceforth to be assessed as high cost, and some cities previously classified as low cost were elevated to high-cost areas.

Consequently, this study uniquely examines the characteristics of those who receive such benefits and identifies the socio-economic inequities in access to employee housing support as a subset of the broader issue of inequity in PNG society. Considering housing fringe benefit discrimination as a form of wage discrimination, the study investigates what policy level indicators are predictive of access to benefits and examines key interactions between these predictors using novel individual level data from a multi-site survey of formal sector employees.

Against this background, Part II outlines the unique historical and legal circumstances that cause extreme housing scarcity in the case of urban PNG. Part III then proceeds to examine the incentives that have guided housing fringe benefit provision via an overview of the available literature on equity in access to housing fringe benefits among formal sector income earners. This is followed by a brief description of the research methodology employed in Part IV and the subsequent presentation of the statistical results and data analysis in Part V. Part VI provides a discussion of the findings in relation to the literature and outlines some potential housing policy implications while Part VII concludes before noting the paper's limitations and avenues for further research.

II PAPUA NEW GUINEA IN CONTEXT: LAND OWNERSHIP, EMPLOYEE HOUSING AND URBAN HOUSING STOCK

PNG has an urbanisation rate of 13 per cent across its 8 million inhabitants — considered low by global standards — with the majority of its urban population living in the major cities of Port Moresby and Lae.[8] Despite this, scarcity of developed urban land contributes to chronic housing shortages, especially for lower income earners but also among those who are relatively better off.[9] This situation has intensified in recent decades due to

7 Papua New Guinea ('PNG') Department of Treasury, *National Budget 2017 Volume 1: Economic Development and Policies* (2016).

8 Secretariat of the Pacific Community, 'Pacific Island Population Estimates and Projections' (Statistics, 2016) <https://prism.spc.int/images/Population_Projections_by_PICT.xlsx>.

9 Wangi, Ondopa and Ezebilo (n 4).

increasing rates of rural-to-urban migration that far outstrips available supply.[10] The primary driver for this scarcity is largely the country's unique land ownership system with laws that recognise both customary land rights and common law (English) land rights. More than 97 per cent of the total land area is held under customary tenure for which there is no recorded title, with ownership rights vested in clans and extended family groups, and the rest predominantly owned by the PNG Government.[11]

Under PNG law, customary land cannot be sold but those wanting to commercialise land may register the land in question, a process that defines title and opens it up to transactions.[12] Landowners seeking to bring their land to the formal land market would need to organise themselves as a group that is registered as an Incorporated Land Group ('ILG'). The ILG can then register their land through voluntary customary land registration, which provides the ILG with a customary land title. However, the customary land title is not yet fully recognised by financial institutions such as commercial banks and as a result, customary land in PNG cannot be used as collateral for accessing a bank loan.

Property development on customary land with long-term (generally 99 year) leases is permitted. However, such exchanges are conducted via collective agreement among owners with complex and lengthy procedural barriers often resulting in disagreements over title and the reclamation of land leased or sold without full consent of the lessee or purchaser. These institutional factors present effective barriers to the commercialisation of land and have resulted in a scarcity of lawful residential dwellings within urban areas. Consequently, formal housing costs have become comparable to much wealthier countries, contributing to substantial socio-economic disparity between those able to access legally constructed dwellings with security of title, and access to government infrastructure provision and those residing in informal slum settlements.[13]

A historical norm in PNG — where people retain ongoing cultural ties to their home villages — has been for employers to provide temporary urban housing for their employees.[14] A justification provided by nearly 50 per cent of respondents in Kaitilla et al's study[15] was that employer-provided housing increased job stability and removed the worries of urban accommodation. The employer-provided housing was effectively part

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10 Ed Kopel, 'Problems of Housing Resources in Papua New Guinea' in David Kavanamur, Charles Yala and Quinton Clements (eds), *Building a Nation in Papua New Guinea: Views of the Post-Independence Generation* (Pandanus Books, 2003) 329. Wangi, Ondopa and Ezebilo (n 4).

11 Satish Chand, 'Registration and Release of Customary-Land for Private Enterprise: Lessons from Papua New Guinea' (2017) 61 *Land Use Policy* 413.

12 Paul Sillitoe and Carl Filer, 'What Local People Want with Forests: Ideologies and Attitudes in Papua New Guinea' in Emma Gilberthorpe and Gavin Hilson (eds), *Natural Resource Extraction and Indigenous Livelihoods: Development Challenges in an Era of Globalization* (Routledge, 2016).

13 Eugene Ezebilo, 'Evaluation of Affordable Housing Program in Papua New Guinea: A Case of Port Moresby' (2017) 7 *Buildings* 73 ('Evaluation of Affordable Housing Program').

14 Kaitilla and Sarpong-Oti, 'Employer-Provided Housing in PNG' (n 5); John Gibson, 'The Papua New Guinea Household Survey' (2000) 33(4) *Australian Economic Review* 377.

15 Kaitilla and Sarpong-Oti, 'Employer-Provided Housing in PNG' (n 5).

of a social contract to help employees meet their housing needs and signal job security in return for enhanced productivity and firm loyalty. Providing housing was also deemed essential for employers in a more traditional sense, in retaining senior and experienced national staff who generally receive higher levels of pay.[16]

In PNG's post-colonial era (beginning with the nation's independence in 1975), the continued prevalence of employer-provided accommodation ensured that urban home ownership in PNG did not increase significantly. A lack of finance and the desire of nationals to retire in their home villages provided strong incentives to avoid ongoing urban home ownership[17] while simultaneously, heavily subsidised government rental housing disincentivised participation in the property market.[18] The quality of the stock of residential buildings was also impacted by employer participation in the urban housing market, driven both by incentives to provide accommodation fit for temporary use, as well as to invest in low-cost housing to minimise the financial burden upon business. As such, investment into housing stock of a higher build quality that was suitable for long-term habitation was discouraged.[19]

Ultimately, with the provision of formal urban housing in PNG grappling with the issues of land shortage and affordability,[20] as well as a lack of suitable housing stock, the relative value of employer remuneration in the form of housing benefits has increased over time. Initially, in the government sector, allocations of government rental subsidies aggravated inequality, with the better paid upper-level public servants paying a more heavily subsidised rent to live in expensive, relatively luxurious, modern housing.[21] More recently, in tandem with the concessional treatment of housing benefits in tax terms that favour higher income groups who live in employer-provided housing,[22] access to employer-provided housing (rather than rental assistance), has become closely associated with people's wages. In particular, high-income earners tend to receive substantial housing fringe benefits in the form of employer-provided housing in existing accommodation, and lower income earners build or rent homes, almost exclusively, in

16 Sababu Kaitilla and William Sarpong-Oti, 'An Overview of Housing Provision in Papua New Guinea: The Role of the Private Sector' (1994) 18(1) *Habitat International* 13 ('Overview of Housing Provision in PNG').

17 Kaitilla and Sarpong-Oti, 'Employer-Provided Housing in PNG' (n 5).

18 Alan Stretton, *Urban Housing Policy in Papua New Guinea* (Institute of Applied Social and Economic Research Monograph 8, 1979).

19 Kaitilla and Sarpong-Oti, 'Overview of Housing Provision in PNG' (n 16).

20 PNG Ministry of Housing, *National Housing Policy* (1994); PNG Ministry of Housing, *National Housing Policy* (2002).

21 Hal Levine and Marlene Levine, 'Review: Stretton, Urban Housing Policy in Papua New Guinea, and May (ed.), Urban Household Survey: Town Profiles' (1982) 91(2) *Journal of the Polynesian Society* 323.

22 Timothy Sharp et al, 'The Formal, the Informal, and the Precarious: Making a Living in Urban Papua New Guinea' (Discussion Paper No 2015/2, ANU State, Society and Governance in Melanesia, 2015).

the informal urban settlements without long-term security of tenure or legal claims to land ownership.[23]

As a consequence, through the lack of suitable dwellings, in addition to institutional structures and practices that favour higher income earners, housing in urban PNG has become both unavailable and unaffordable for a large portion of the urban population (60 per cent in 1993).[24] Relevantly, this has not changed in recent years.[25]

III EQUITY IN ACCESS TO HOUSING AND EMPLOYEE HOUSING SUPPORT FOR MODERATE INCOME EARNERS

While the state of affairs in PNG may be magnified by its unique institutional and cultural idiosyncrasies, housing affordability is a common theme in urban growth where residents can be priced out of housing near their usual places of work. Moderate-income households experiencing such affordability challenges are often ineligible for government support, which usually caters to those outside the labour market.[26] Notable exceptions to this include various 'First Home Buyer' schemes seen in Canada, Australia and PNG, which, far from making housing more affordable, may have the unintended consequence of pushing prices up by the benefit amount, thereby stimulating housing markets further where property is scarce.[27] A consequence of a lack of affordable housing in urban centres is the incentivisation of moderate-income households to reside elsewhere in the region.[28] Where transport infrastructure is well developed, these households face additional commute costs while retaining employment in the urban core.

In PNG, where transport infrastructure is less developed, enforcement of land rights is haphazard and where the formal urban core is relatively small, this spatial mismatch may also incentivise habitation in informal settlements. These settlements may impart additional costs that affect vulnerable populations, particularly in terms of uncertain tenure, lack of security, and lack of access to government services and essential infrastructure. In other settings, individuals have also been found to experience stress

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23 Charles Yala, 'Land Reform in Papua New Guinea: Quantifying the Economic Impacts' (Discussion Paper No 108, National Research Institute, 2015) 5–36.

24 Kaitilla and Sarpong-Oti, 'Employer-Provided Housing in PNG' (n 5).

25 Wangi, Ondopa and Ezebilo (n 4); Thomas Webster, Sadish Chand and Lindsay Kutan, Property and Housing Policy Development' (Discussion Paper No 149, National Research Institute, 2016).

26 Noel Morrison, 'Securing Key Worker Housing Through the Planning System' in Sarah Monk and Christine Whitehead (eds), *Making Housing More Affordable: The Role of Intermediate Tenures* (Wiley-Blackwell, 2010) 120.

27 David Blight, Michael Field and Henriquez Eider, 'The First Home Buyer Grant and House Prices in Australi' (2012) December *Deakin Papers on International Building Economics* 1.

28 Rebecca Lazarovic, David Patton and Lisa Bornstein, 'Approaches to Workforce Housing in London and Chicago: From Targeted Sectors to Income-Based Eligibility' (2016) 31(6) *Housing Studies* 651.

related to reconciling work and family — this especially affects single parents and women where home duties are dominantly gender imbalanced.[29]

Similarly, employers in high-cost areas are also known to experience problems of recruitment and retention, particularly for lower skill sectors or sectors where skills are easily transferable.[30] Furthermore, recruitment and retention difficulties in public sector services such as health, education and policing have negative effects on local service provision and the local economy which depends on those services.[31] Increased travel distances can be especially problematic for those employment sectors where employees are on-call and must be able to reach their workplace quickly.[32]

Hence, it is no surprise that employer-provided housing support for employees has a long history going back to the industrial revolution, with its genesis as factory housing for unskilled and line workers. Modern equivalents of these mass-housing projects persist today, for example, employee dormitories in the electronics manufacturing industry of China[33] and Vietnam.[34] In these instances, maintaining the characteristics of temporary accommodation has shifted the focus of firms to maximising worker hours while restricting labour mobility and negotiating power.

While this forms an important part of the literature, this is not applicable to the situation in PNG where manufacturing dormitories are not prevalent. Notwithstanding, there are housing programs such as those in the United Kingdom (London) and the United States (Chicago) that provide 'intermediate' housing for targeted sector employees of essential services, for example, where a quick response time and short commute is desirable for the employer.[35] While these programs could form part of the mix for government sector provision in PNG, it is more likely to constitute a small part of wider employee housing assistance provision. Elements of the abovementioned incentives for employee housing could likely influence the situation in PNG, however there is little comparison to the historical PNG narrative of a social contract in housing provision where housing fringe benefits are the norm.[36] As such, little is known about the inequity in access to housing fringe benefits from the perspective of income earners, and even less so in the context of non-industrialised economies.

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29 Richard Wener, Gary Evans and Pier Boately 'Commuting Stress: Psychophysiological Effects of a Trip and Spillover into the Workplace' (2005) 1924(1) *Journal of the Transportation Research Board* 112.

30 Kathleen Scanlon, 'Targeting Groups: Key Workers' Needs and Aspirations' in Sarah Monk and Christine Whitehead (eds), *Making Housing More Affordable: The Role of Intermediate Tenures* (Wiley-Blckwell, 2010) 165.

31 Morrison (n 26).

32 Scanlon (n 30).

33 Noel Morrison, 'Building Talented Worker Housing in Shenzhen, China, to Sustain Place Competitiveness' (2014) 51(8) *Urban Studies* 1539.

34 Chris Smith and Pun Ngai, 'The Dormitory Labour Regime in China as a Site for Control and Resistance' (2006) 17(8) *The International Journal of Human Resource Management* 1456.

35 Lazarovic, Patton and Bornstein (n 28).

36 Kaitilla and Sarpong-Oti, 'Employer-Provided Housing in PNG' (n 5).

Nonetheless, one basis of comparison may be with that of Japanese corporations, which have typically provided their employees with low-cost rental housing, as well as financial assistance towards acquiring their own homes. In particular, while the corporate sector has played a crucial role in improving overall employee welfare in Japan[37] — in terms of equity in access to housing — the distribution of this welfare has been less than impartial due to cultural norms with much of this support provided to single, male workers. In contrast, welfare to single female labour force participants is severely limited.[38] While different in many respects, PNG also retains similar patriarchal cultural norms and therefore may also suffer from a similar access to housing inequity.

Taking a step further, if one considers housing support as part of a broader set of fringe benefits that form part of the value of an individual's wage, it is easy to consider access to housing support as determined by factors that affect wages in general, such as education and experience. Likewise, when considering inequities in access to employer-provided housing support as a form of wage discrimination, a much broader literature is available that indicates characteristics including gender,[39] ethnicity[40] and age,[41] are substantive determinants of wage outcome. From a policy and planning perspective, these are relatively accessible demographic indicators that highlight high risk groups. In particular, these factors are also known to interact; for example, the bulk of the decline in gender discrimination in the 21st century, is due to better labour market endowments of women (i.e. better education, training and work attachment) which has led to shifting attitudes in compensation.[42]

IV MATERIALS AND METHODS

This study investigated the dwelling, and employer and employee characteristics associated with the provision of housing benefits in PNG. This section briefly outlines the survey instrument, sample selection and data collection procedures adopted in the study.

A *Survey Instrument*

The survey instrument, or questionnaire, comprised two sections. Section A specifically focused on various fairness/equity dimensions with regards to housing benefits. Section

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37 Ian Sato, 'Welfare Regime Theories and the Japanese Housing System' in Yosuke Hirayama and Richard Ronald (eds), *Housing and Social Transition in Japan* (Routledge, 2006).

38 Koichi Fujimoto, 'From Women's College to Work: Inter-Organizational Networks in the Japanese Female Labor Market' (2005) 34(4) *Social Science Research* 651.

39 For a review see Doris Weichselbaumer and Rudolf Winter-Ebmer, 'A Meta-Analysis on the International Gender Wage Gap' (2005) 19(3) *Journal of Economic Surveys* 479.

40 Arthur Goldsmith, Darrick Hamilton and William Darity, 'Shades of Discrimination: Skin Tone and Wages' (2006) 96(2) *American Economic Review* 242.

41 Geoffrey Wood, Adrian Wilkinson and Mark Harcourt, 'Age Discrimination and Working Life: Perspectives and Contestations – A Review of the Contemporary Literature' (2008) 10(4) *International Journal of Management Reviews* 425.

42 Weichselbaumer and Winter-Ebmer (n 39).

B captured demographic factors of the participants including age, income, gender, occupation and education, as well as accommodation-specific information and whether the participant received housing support from their employer. The survey instrument was pilot-tested amongst a small group of 20 individuals associated with the University of Papua New Guinea in Port Moresby. After the survey was refined and edited, it was endorsed and obtained the prerequisite ethics approval from Monash University.

B *Sample Selection and Data Collection Procedures*

Sample selection was conducted in two stages. The first stage of sample selection sought to identify the areas where the survey would be best conducted. Accordingly, four cities were selected where the prescribed taxable component of employer-provided accommodation benefits were the highest in the country but similar across all four cities. Port Moresby and Lae were preferred due to their status as the only two metropolitan cities in PNG where formal sector employment is concentrated. Goroka and Madang were included from among the country's second tier towns since they also have relatively large formal sector employers. The survey targeted individuals who currently had paid employment in the formal sector for three reasons: first, these participants were more likely to have incurred taxes on their employment income; second, they were more likely to receive a cash housing allowance or live in employer-provided accommodation; and third, they were more likely to be able to read and complete the questionnaire that was written entirely in English without the need for assistance.

The second stage of sample selection was judgemental, in that relatively large public, private and church or non-government organisations ('NGOs') were selected as they were likely to employ a large number of employees in different but clearly distinguishable grades. While government departments and churches or NGOs were relatively few and therefore easy to identify, the private sector organisations were selected from the company register maintained by the Investment Promotion Authority ('IPA'). Introductory letters were sent to the chief executives of the selected organisations seeking their consent to allow the survey team to approach their employees who would be asked to voluntarily take part in the survey. Some chief executives did not respond while others refused access to their staff. The participation of employees of organisations that had not been contacted earlier were also canvassed to increase the sample size. The employing organisations in the sample were therefore selected based on the ease of access to their staff.

C *Sample Return*

In total 2,000 questionnaires were hand delivered, 800 in Port Moresby and 400 each in Lae, Goroka and Madang either directly to consenting employees or through the human resource officers in each of the consenting organisations. Some human resource officers did not return questionnaires completed by some or all of the employees who had agreed to participate in the survey. A final sample of n = 1,652 (response rate 83 per cent) was obtained and distributed throughout the four cities as follows: Port Moresby $n_1 = 606$ (response rate 76 per cent); Lae n_2 = 371 (response rate 93 per cent); Madang n_3 = 352 (response rate 88 per cent); and, Goroka n_4 = 323 (response rate 81 per cent).

V RESULTS

Empirical results and analysis from the survey questionnaire data are presented in two stages. First, a descriptive analysis profiles the survey participants against the survey metrics. Second, results of a Multinomial Logistic Regression of Housing Benefits are presented to examine the propensity of receiving housing assistance based on participant characteristics.

A *Participant Profile*

Descriptive statistics presented in Table 1 (below) show that the sample was evenly distributed amongst males and females, with the majority aged between 31–40 years (35 per cent), married and of PNG nationality. Generally, the participants were well-educated (46 per cent Bachelor's degree or higher), with a large proportion of employees from public sector employers. About one third (36 per cent) of the respondents earnt between PGK700 and PGK1,300 gross per fortnight (approximately USD200–380). It was also evident that over two thirds (71 per cent) were not residing in employer-provided accommodation but rather in their own house or home.

TABLE 1: PARTICIPANT CHARACTERISTICS

CHARACTERISTIC		FREQUENCY	PERCENTAGE (%)
Access to Employer Support for Housing	No	852	55
	Employer-Provided Housing	383	25
	Employer-Provided Allowance	305	20
Gender	Female	703	46
	Male	837	54
Age	21–30	415	27
	31–40	555	36
	41–50	374	24
	Over 50	196	13
Nationality	PNG National	1,516	99.9
	Other	24	0.1
Marital Status	Divorced/Separated	131	9
	Married/De facto	1,061	77
	Single/Never married	300	19
	Widowed	48	3
Education	Year 12 or below	279	18
	Diploma or Certificate	574	37
	Bachelor or Postgraduate Degree	687	45
Income per fortnight	Less than PGK400	110	7
	PGK400–PGK700	287	19
	PGK700–PGK1,300	561	36
	PGK1,300–PGK2,700	404	26
	PGK2,700 or more	178	12

Employer Category	Church or NGO	121	8
	Private Sector	489	32
	Public Sector	930	60
City	Goroka	306	20
	Lae	342	22
	Madang	336	22
	Port Moresby	556	36

B *Multinomial Logistic Model of Housing Benefits*

Respondents were asked whether they received employer-provided housing and if they did not, whether they received a cash allowance for their housing needs. The responses to these two questions were re-encoded into a single variable to represent the level of benefits received (1 = '*Employer-Provided Housing*' and 2 = '*Cash Allowance*'). The following analysis employed list-wide deletion of missing values with a total of 1,540 complete responses analysed. A multinomial logistic regression was fitted to model the propensity to receive the different types of benefits against participant characteristics collected through the survey and the results are summarized in Table 2. The case of receiving 'No allowance' was used as the base case and a set of interactions against gender included to account for correlations driven by gender inequality.

TABLE 2: MULTINOMIAL LOGISTIC REGRESSION

VARIABLES		(1) EMPLOYER-PROVIDED HOUSING	(2) EMPLOYER-PROVIDED ALLOWANCE
MAIN EFFECTS		**COEFF. (S.E)**	**COEFF. (S.E)**
What is your gender?	Female	–	–
	Male	-0.0157 (0.877)	0.178 (0.968)
Education	Year 12 or below	–	–
	Diploma or Certificate	-0.102 (0.335)	-0.347 (0.321)
	Bachelor or Postgraduate Degree	0.651* (0.363)	-0.208 (0.342)
Age	21–30	–	–
	31–40	0.275 (0.315)	-0.480* (0.267)
	41–50	0.487 (0.347)	-0.778** (0.328)
	Over 50	1.066*** (0.399)	-0.488 (0.407)
Fortnightly income	Less than PGK400	–	–
	PGK400–PGK700	0.399 (0.522)	1.589** (0.68)
	PGK700–PGK1,300	0.474 (0.506)	2.381*** (0.675)
	PGK1,300–PGK2,700	0.510 (0.547)	2.773*** (0.709)
	PGK2,700 or more	1.126* (0.627)	3.292*** (0.733)
City	Goroka	–	–
	Lae	1.137*** (0.205)	0.0392 (0.236)
	Madang	0.685*** (0.205)	-0.0639 (0.23)
	Port Moresby	-0.533** (0.214)	-0.211 (0.195)

Employer category	Church and NGO	–	–
	Private Sector	-0.758* (0.446)	-0.252 (0.395)
	Public Sector	-0.128 (0.388)	-1.515*** (0.399)
INTERACTIONS WITH GENDER			
Age	31-40×Gender, Male	0.424 (0.402)	0.903** (0.379)
	41-50×Gender, Male	1.019** (0.438)	1.386*** (0.451)
	Over 50×Gender, Male	0.477 (0.517)	1.398*** (0.539)
Education	Diploma or Certificate×Gender, Male	0.593 (0.45)	0.395 (0.455)
	Bachelor or Postgraduate Degree×Gender, Male	0.468 (0.477)	0.830* (0.469)
Fortnightly income	PGK400–PGK700×Gender, Male	-0.267 (0.71)	-0.754 (0.889)
	PGK700–PGK1,300×Gender, Male	-0.340 (0.696)	-1.504* (0.887)
	PGK1,300–PGK2,700×Gender, Male	0.600 (0.732)	-0.779 (0.923)
	PGK2,700 or more×Gender, Male	-0.185 (0.816)	-1.279 (0.961)
Employer category	Private Sector×Gender, Male	-0.004 (0.586)	-0.501 (0.548)
	Public Sector×Gender, Male	-0.552 (0.526)	0.119 (0.541)
Constant		-2.292*** (0.681)	-1.952*** (0.73)
Observations		1,485	1,485
McFadden's Psuedo R^2			0.155
SMALL-HSIAO TESTS OF IIA ASSUMPTION		χ^2	$p > \chi^2$
No Employer-Provided Assistance		37.397	0.166
Employer-Provided Housing		40.696	0.092
Employer-Provided Allowance		29.401	0.497

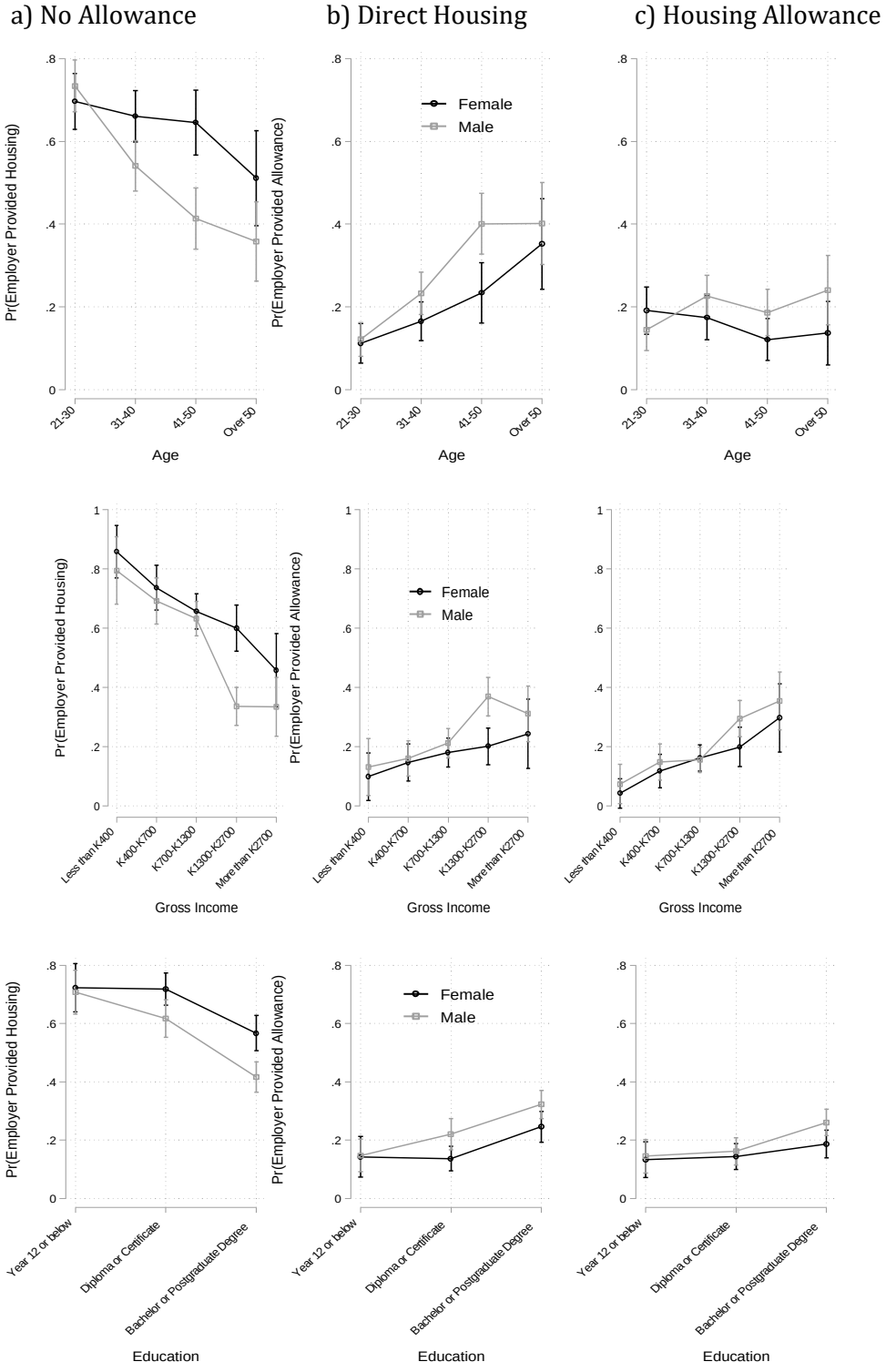
Standard Errors (S.E) in parentheses: *** p < 0.01, ** p < 0.05, * p < 0.1

An analysis of potential interactions revealed that gender played a significant role across most variables and a model including these is presented for analysis. The Small-Hsiao test was used to check for the assumption of the independence of irrelevant alternatives ('IIA') and this was not rejected for any of the dependent variable levels (for a significance cut-off of 0.05).

Assessed against the base model of receiving 'No housing benefits', having a bachelor or post-graduate level education was a significant positive predictor for receiving employer-provided housing ($\beta = 0.651$, $p < 0.1$) as was being over the age of 50 ($\beta = 1.066$, $p < 0.01$) or earning more than PGK2,700 per fortnight ($\beta = 1.126$, $p < 0.1$). Working in the private sector was found to be a negative predictor for receiving employer-provided housing ($\beta = -0.758$, $p < 0.05$) against the base case of being employed by a Church or NGO. Compared to respondents in Goroka, those living in Port Moresby were less likely to receive

employer-provided housing (β = -0.533, p < 0.05) and more likely if they lived in Lae (β = 1.137, p < 0.01) or Madang (β = 0.685, p < 0.01). Against the base case of being employed by a Church or NGO, working in the public sector was found to be a negative predictor for receiving an employer-provided housing allowance (β = -1.515, p < 0.01) while increasing levels of income predicted greater propensity to receive an allowance (p < 0.01). Additionally, a variety of interaction terms proved statistically significant, the effects of which are best examined graphically, see Figure 1 below.

FIGURE 1: MARGINAL EFFECTS AT MEAN VALUES ACROSS GENDER



The marginal probabilities and 95 per cent confidence intervals for receiving the different types of housing support across different levels of age, education and income calculated at mean levels across all other variables are presented in Figure 1 above. Each column of charts in Figure 1 represents a level of housing support provision (i.e. a) no allowance, b) employer housing and c) employer housing allowance) while each row of charts represents are different target variable (age, income and education respectively). The lines represent the different marginal probabilities by gender. Examining the first row, the marginal likelihood of receiving employer-provided housing increases with age, perhaps reflecting grandfathered arrangements, with new applicants needing to wait for existing recipients to vacate in the absence of new housing stock. Thus, it appears there are effective barriers to entry for younger workers. At the same time, this effect of age, observed while controlling for income and education (indicators of seniority and expertise respectively) may be seen as the value given to 'service' in an organisation and aligns with the employee retention motivation of housing provision.

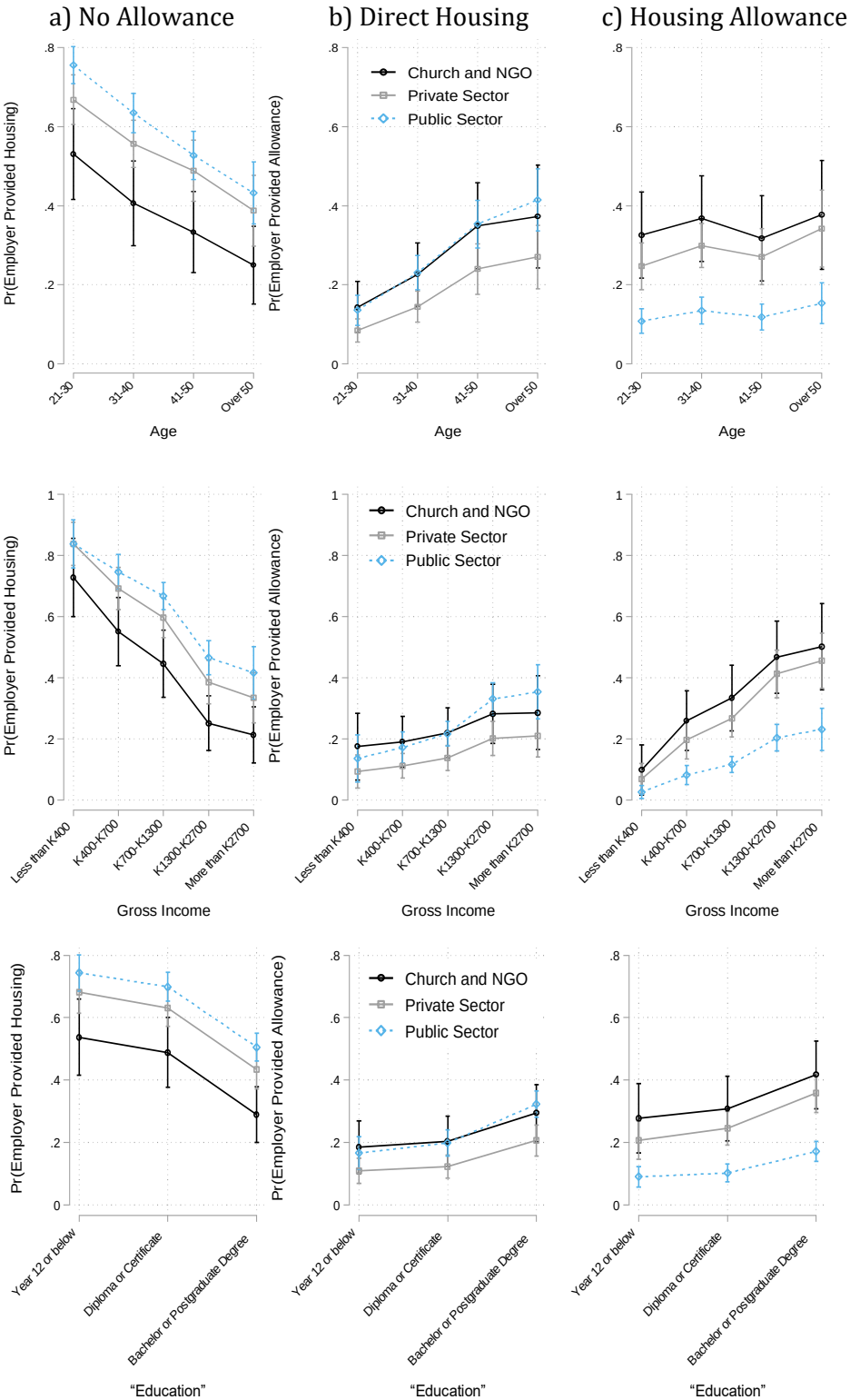
Marginal probabilities are similar between younger men and women but among older employees the gap widens substantially with men in the 41–50 age group being almost twice as likely as women to live in employer-provided housing, though this diminishes somewhat over age 50. For housing allowances, age does not appear to be as influential, though men in some older age categories are around one-and-a-half times more likely to receive an allowance than women of the same age. While the marginal likelihood of receiving either employer-provided housing or a housing allowance increases with higher levels of education (indicator of expertise) it appears to increase more so for men than for women and even then, women only appear to benefit if they have completed a higher education degree. As income increases so does the propensity to receive some sort of employer-provided housing support, with the increase more pronounced in the allowance case. This effect does not appear to be influenced by gender.

A second set of marginal probabilities and 95 per cent confidence intervals for the different types of housing support across age, education and income at mean levels are presented in Figure 2 below. Columns and rows of graphs follow the same format as Figure 1, while lines here represent the different marginal probabilities by employer type (government or public sector, NGO, private sector). Here it appears, as before, that age plays a greater role in the direct provision of housing than for allowances, and education similarly improves the likelihood of housing support in general. Overall, marginal probabilities reflect an increased propensity for government employers to provide benefits (in terms of direct accommodation) with private employers tending to favour allowances. This is reflective of the PNG Government's ease of access — and ability — to repurpose existing land holdings under its ownership. Employees of NGOs also exhibit similar propensities to that of their government counterparts for direct housing provision and propensities equivalent to their private counterparts in terms of housing allowance.

There is a gradual decline in the probability of receiving no housing support at all as income increases, with a strong positive relationship between the probability of receiving a cash allowance and increased income. There is some positive effect on direct housing provision as income increases, and these increases are similar across the three employer

types. This relative contribution of fortnightly income to the propensity to receive employer-provided housing is modest at mean levels. In other words, the income poor are broadly equally likely to receive such benefits as the income rich. In contrast, for allowances there is a steep increase in probabilities across income groups for both private and NGO employees. This same relationship persists but is substantially muted for government employees.

FIGURE 2: MARGINAL EFFECTS AT MEAN VALUES ACROSS EMPLOYER TYPE



VI DISCUSSION

Given the scarcity of suitable legally recognised dwellings among available urban housing stock, employee housing support is a substantial fringe benefit for those working in the PNG formal sector. This study finds that urban PNG residents receiving employer housing support have noticeably different socio-demographic characteristics in access to such benefits. Under current arrangements where private home ownership or even suitable rental accommodation is beyond reach for lower-middle and middle-income earners, the study's results are considered in terms of policy options that target incentives for equity in housing access.

The study models a strong association between the propensity to receive a cash allowance (but not employee housing) with increasing income. Compared to the lowest income group (less than PGK400 per fortnight), those in the top income category (more than PGK2,700 per fortnight) enjoy 26.89 times the odds of receiving a housing allowance. It is clear that allowances are not considered private welfare, but rather form part of the usual employment remuneration. While the size of the allowance is not measured in our data, it is reasonable to expect that allowances for lower income individuals are quite small, in line with the size of their total earnings.[43] The housing allowance for public servants, for example, has been found to fail in meeting housing affordability criteria which is approximately 30 per cent of the base salary.[44] These allowances are also considered a fringe benefit under PNG tax law and are taxed as income under PNG's progressive tax system. Therefore, while equitable with regards to vertical taxation, low- and middle-income earners are disadvantaged in access to housing allowances, both in the likelihood of receipt as well as in allowance size. In contrast, no such income relationship is evident for direct housing benefits, even at lower income levels. Here also, the overall value of a housing benefit is likely to be much higher than an allowance. Consequently, the results support the findings of Kaitilla and Sarpong-Oti's earlier study[45] and also Gibson[46] in recognising and having a 'social contract' for temporary urban housing provision.

Employer-provided housing in PNG is most commonly associated with the central government, provincial governments and statutory authorities and institutions, such as universities, hospitals and NGOs, rather than with typical private sector employers. This study also observed this strong link between the employer type and the type of housing support provided. Notably, this is not to suggest that private sector employers in PNG do not recognise that recruiting and retaining qualified employees is connected to housing issues. Instead, most private sector employers prefer paying third party rental house providers or cash allowances to their employees, rather than have their own capital

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43 National Statistical Office of PNG, *2009-2010 Papua New Guinea Household Income and Expenditure Survey, Summary Tables* (2011).

44 Wangi, Ondopa and Ezebilo (n 4).

45 Kaitilla and Sarpong-Oti, 'Employer-Provided Housing in PNG' (n 5).

46 Gibson (n 14).

investment to accommodate their workers.[47] One reason underpinning the private sector's preference towards cash allowance arrangements may be that the tax treatment of the employee housing allowance is relatively simple, being assessed as income and taxed at the relevant marginal personal income tax rate.

On the other hand, this raises another potential equity issue as the prescribed value of employer-provided accommodation[48] is taxed at concessional rates. Prior to 2017,[49] the prescribed taxable value of employer-provided, low-cost housing (in Goroka, Lae, Madang, Mt Hagen or Port Moresby)[50] which could fetch PGK400,000 or less if sold in the open market, or for which market rental was PGK1,000 or less per week, was PGK160 per fortnight. On the higher end of the spectrum at that time, the taxable value of employer-provided, high-cost housing located in any of the four major cities mentioned above which could fetch PGK800,000 or more if sold in the open market, or for which market rental is between PGK3,000 but less than PGK5,000 per week, was PGK400 per fortnight. A comparative look at these figures suggests that, in nearly all cases, more than 80 per cent of the value of the employer-provided housing benefit was not subject to tax.[51]

Clearly issues of horizontal and vertical equity arise in this situation. Horizontal equity, in that the tax burden is not shared equally by all taxpayers in similar economic positions, as recognised by Jackson and Milliron's[52] extensive literature review. Also, with regards to vertical equity, where the tax system does not treat everyone equally relative to their income level. This was recognised by Reckers et al[53] and Moser et al[54] and further that the distribution of the tax burden is not in line with a taxpayer's ability to pay, as supported by Smith and Kinsey.[55] In addition to this, the value of house rentals in PNG is

47 Ezebilo, 'Evaluation of Affordable Housing Program' (n 13); Ezebilo, 'Evaluation of Affordable House Rent Prices' (n 1).

48 'Accommodation' refers to a house, flat, unit, hotel, motel, guesthouse, etc. that an employee is provided with the right to occupy or use as the usual place of residence; but ownership of these types of accommodation does not pass from employer to employee.

49 The prescribed taxable benefits in relation to employer-provided housing were last updated in 2011.

50 From 1 January 2017 the list of major cities classified as Area 1 (high cost) has been expanded to include Kokopo, Alotau and Kimbe. Major urban centres included in Area 2 (medium cost) are Arawa, Buka, Bulolo, Daru, Kainantu, Kavieng, Kerema, Kiunga, Kundiawa, Lihir, Lorengau, Mendi, Popondeta, Pogera, Rabaul, Tabubil, Vanimo, Wabag, Wau and Wewak. Any other place in PNG not in Areas 1 and 2 are classified in Area 3 (low cost) where the prescribed values of employer provided accommodation is nil. The discussion in this paper is restricted to the major cities in Area 1 for illustration purposes.

51 PNG Taxation Review Committee, *Papua New Guinea Taxation Review: Report to the Treasurer* (Vol 1 and 2, 2015).

52 Ben Jackson and Valarie Milliron, 'Tax Compliance Research: Findings, Problems and Prospects' (1986) 5 *Journal of Accounting Literature* 125. Ned Staudt, 'The Hidden Costs of the Progressivity Debate' (1997) 50(4) *Vanderbilt Law Review* 919.

53 Philip Reckers, Debra Sanders and Stephen Roark, 'The Influence of Ethical Attitudes on Taxpayer Compliance' (1994) 47(4) *National Tax Journal* 825.

54 David Moser, John Evans and Kim Clair, 'The Effects of Horizontal and Exchange in Equity on Tax Reporting Decisions' (1995) 7(4) *The Accounting Review* 619.

55 Kent Smith and Karyl Kinsey, 'Understanding Taxpayer Behaviour: A Conceptual Framework with Implications for Research' (1978) 21(4) *Law and Society Review* 639.

low in low-income areas, whereas houses located in the central business district reveal higher median house rent prices.[56]

Consequently, those low-income earners living in areas outside the central business district are at a distinct disadvantage, if their housing allowances are subject to full taxation while higher income earners receive concessional tax treatment. In 2017, reforms to the housing benefit tax, introduced two new tiers for upmarket and very high-cost houses to target the affluent and high-income earners, increasing the taxable component of the housing benefit enjoyed by generally higher income earners. At the same time, in order to keep up with the appreciation of housing costs over the years, modest accommodation previously assessed as 'low cost' or 'medium cost' would now be assessed as 'high cost'; while some areas that were previously assessed as 'low cost' would now assessed as 'high cost' areas.[57] While the reaction to the increase in taxable values of employer-provided housing was somewhat mixed initially,[58] there was a strong desire to find some empirical evidence to justify the government's decision.[59] As such, the findings of this study goes some way to providing further support for the government's decision.

While the aforementioned reforms may align direct housing benefits with allowances from a tax perspective, another reason why direct housing provision is more common in the government sector is because of access to land for urban housing development. The National Housing Corporation ('NHC') for example, has an ongoing role as the sole public housing agency in PNG and provides housing facilities for civil servants. It manages existing residential stock and facilitates public-private partnerships in the construction of new dwellings. As such, it also has significant influence over the quality and mix of new dwelling construction.[60] However, the NHC's projects are often undertaken on government land within the metropolitan perimeter that has been repurposed for residential construction. While this appears to be appropriate, increases in-house rent and scarcity of stock, impacts upon the affordability of homes for low- and middle-income households, and has also substantially raised the cost of acquisition for private sector organisations.

A *Housing Policy Measures to Address Inequities*

A crucial policy issue remains in the scarcity of new land for urban development. As land is also a major factor in the cost of housing rentals the government could play an important role in facilitating the unlocking of more customary land with proper titles to

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56 Ezebilo, 'Evaluation of Affordable House Rent Prices' (n 1).

57 Papua New Guinea Department of Treasury (n 7).

58 Charles Yapumi, 'Pruaitch Clears Misunderstanding on Housing Tax', *Loop PNG* (Web Page, 30 November 2016) <https:/www.looppng-sb.com/content/pruait-clears-misunderstanding-housing-tax>.

59 Devos et al, 'Public Perceptions About Housing Benefits Tax in Papua New Guinea' (Discussion Paper No 167, National Research Institute, 2019).

60 Ezebilo, 'Evaluation of Affordable Housing Program' (n 13).

supplement the remaining state-owned land.[61] Currently, disincentives to housing investment exist; even on available land where the provision of trunk infrastructure is not forthcoming.[62] To this end, the current (2020) iteration of the PNG affordable Housing Program ('AHP'), if ratified, will facilitate compulsory acquisitions of land by the government on long-term (99 year) leases to be developed through public-private partnerships supported by the NHC. Although agencies such as the NHC have previously faced scandals around forced evictions and cost blowouts, they should try to ensure that this does not impact upon the smooth implementation of the AHP. If institutional trust can be maintained, the availability of new land for housing may enhance the effectiveness of other programs that improve overall housing affordability, as well as targeting those households less likely to receive support.

For example, with increased housing stock, a gradual shift from reliance on employer-provided housing to allowances — or perhaps also access to the government's First Home Ownership Scheme — could offer some reprieve for younger employees, a group identified in this study as being less likely to otherwise receive employer support. In 2013 the PNG Government had earmarked PGK200 million for first home loan borrowers under a First Home Ownership Scheme, to enable PNG citizens access to more affordable housing in the country's cities and towns.[63] However, with limited alienated land, and stringent loan conditions (i.e. borrowers must deposit 10 per cent of the value of the house they want to purchase to gain access to loans capped at PGK400,000 to be repaid in 40 years at 4 per cent interest), the facility has been largely unavailable to the majority of working-class Papua New Guineans to date.

This study also found women to be less likely to access housing support, which is arguably part of a much broader discussion on gender equity in PNG. Inequity is well documented with regards to access to education[64] and the legal system,[65] as well as wide-spread discrimination and violence towards women which is partly fuelled by customary practices.[66] In the case of access to employee housing support the study identifies women as having decreased propensity to access both types of employer support despite controlling for other factors such as income, education and age. The findings also reveal

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61 Ezebilo, 'Evaluation of Affordable House Rent Prices' (n 1); Sillitoe and Filer (n 12); Carl Filer, 'The Double Movement of Immovable Property Rights in Papua New Guinea' (2014) 49(1) *The Journal of Pacific History* 76.

62 Ezebilo, 'Evaluation of Affordable House Rent Prices' (n 1).

63 Ezebilo, 'Evaluation of Affordable Housing Program' (n 13).

64 Jan Edwards, 'Gender and Education Assessment, Papua New Guinea: A review of the Literature on Girls and Education' (Report, 2015)<https://dfat.gov.au/about-us/publications/Documents/png-gender-and-education-assessment-review-literature-girls-education.pdf>.

65 Committee on the Elimination of Discrimination Against Women ('UNCEDAW'), *Concluding Observations of the Committee on the Elimination of Discrimination Against Women*, 46th sess, CEDAW/C/PNG/CO/32010 (12–30 July 2010). <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/PNG/CO/3&Lang=En>.

66 Amnesty International, 'Amnesty International Report 2017/18' (Report, 2018) <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

that gender interacts with these other characteristics and that the gender gap is more pronounced among older employees and those with lower educational achievement. Yet, these differences — despite being statistically significant — are not altogether substantial. While it is acknowledged that certain differences in respondents may be occluded by the broad-based measures used (e.g. occupational preference, or differences across sub-groups such as single parents), there is evidence in line with global trends of labour market endowments of women (i.e. better education, training, and work attachment) leading to shifting attitudes in compensation,[67] at least in PNG urban formal sector employment.

VII CONCLUSION

This study found that those living in employer-provided housing and those receiving housing allowances tend to exhibit high levels of socio-economic advantage, though the nature of that advantage differs between the two forms of support. Thus, it appears that at present, there is weak evidence in PNG for employer-provided housing to be considered a form of private subsidised social housing defensible on equity and social justice grounds. Overall, the study found that significant inequalities exist in terms of access and support to quality accommodation, and the data examined is only for the formal sector. Inequity in the informal sector is likely to be substantially higher. Consequently, in the broader context of equity and social justice, this study finds that the recent reforms to the tax treatment of employer-provided housing are well founded. In addition, other general measures focused on the release of urban land for residential development and incentive measures to increase private ownership, including specific measures targeting disadvantaged groups, will contribute to providing equitable access to formal sector housing.

A *Limitations and Further Research*

It is noted that there are a few shortcomings to the data collected in this study. While the survey collected information of receipt of housing benefits, these are not necessarily associated with the income producing activities of the individuals surveyed. This is despite all respondents being in formal sector employment. For example, a spouse may be the recipient of the housing fringe benefit. Likewise, among those who receive no housing benefit from employers, it was unclear what level of desire for a housing benefit is — in that they may own their formal (legal) home or rent or live in an informal settlement. Those who already own accommodation superior to that offered, may self-select out of the recipient group in return for increased compensation. On the other hand, if such alternate compensation is not common (e.g. fixed government wages), the recipient may make available their own housing for rent and accept employer assistance. However, the study does not expect this to be a common issue given the low home ownership rates.

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[67] Weichselbaumer and Winter-Ebmer (n 39).

Correspondingly, while we have an understanding of the value of the dwelling provided, the study does not measure the direct value of any transfers in the form of rental assistance, although these could be quite small. Public servants for example, may be given as little as PGK7 (approximately USD3) per fortnight as a housing allowance, where the average rental is PGK700–800 (approximately USD300–345) per week.[68] Additionally, the data does not account for other family factors, where for example, fringe benefits may vary based on an individual's housing needs, such as number of adults and children present. The research also does not assess the power relationship between an employer and employee, and the consequent impact on labour mobility where valuable access to housing is provided. An examination of this, and other variables, along with the collation of qualitative data, would potentially strengthen any future research.

REFERENCES

A *Articles/Books/Reports*

Amnesty International, 'Amnesty International Report 2017/18' (Report, 2018) <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>

Blight, David, Michael Field and Henriquez Eider, 'The First Home Buyer Grant and House Prices in Australi' (2012) December *Deakin Papers on International Building Economics* 1

Chand, Satish, 'Registration and Release of Customary-Land for Private Enterprise: Lessons from Papua New Guinea' (2017) 61 *Land Use Policy* 413

Edwards, Jan, 'Gender and Education Assessment, Papua New Guinea: A review of the Literature on Girls and Education' (Report, 2015)<https://dfat.gov.au/about-us/publications/Documents/png-gender-and-education-assessment-review-literature-girls-education.pdf>

Ezebilo, Eugene, 'Evaluation of Affordable Housing Program in Papua New Guinea: A Case of Port Moresby' (2017) 7 *Buildings* 73

Ezebilo, Eugene, 'Evaluations of House Rent Prices and Their Affordability in Port Morseby' (2017) 7(4) *Buildings* 114

Filer, Carl, 'The Double Movement of Immovable Property Rights in Papua New Guinea' (2014) 49(1) *The Journal of Pacific History* 76

Fujimoto, Koichi, 'From Women's College to Work: Inter-Organizational Networks in the Japanese Female Labor Market' (2005) 34(4) *Social Science Research* 651

Gibson, John, 'The Papua New Guinea Household Survey' (2000) 33(4) *Australian Economic Review* 377

[68] UNCEDAW (n 65).

Goldsmith, Arthur, Darrick Hamilton and William Darity, 'Shades of Discrimination: Skin Tone and Wages' (2006) 96(2) *American Economic Review* 242

Jackson, Ben and Valarie Milliron, 'Tax Compliance Research: Findings, Problems and Prospects' (1986) *5 Journal of Accounting Literature* 125

Kaitilla, Sababu and William Sarpong-Oti, 'An Overview of Housing Provision in Papua New Guinea: The Role of the Private Sector' (1994) 18(1) *Habitat International* 13

Kaitilla, Sababu and William Sarpong-Oti, 'Employer-Provided Housing in Papua New Guinea: Its Impact on Urban Home Ownership in the City of Lae' (1993) 17(4) *Habitat International* 59

Kopel, Ed, 'Problems of Housing Resources in Papua New Guinea' in David Kavanamur, Charles Yala and Quinton Clements (eds), *Building a Nation in Papua New Guinea: Views of the Post-Independence Generation* (Pandanus Books, 2003)

Lazarovic, Rebecca, David Patton and Lisa Bornstein, 'Approaches to Workforce Housing in London and Chicago: From Targeted Sectors to Income-Based Eligibility' (2016) 31(6) *Housing Studies* 651

Levine, Hal and Marlene Levine, 'Review: Stretton, Urban Housing Policy in Papua New Guinea, and May (ed.), Urban Household Survey: Town Profiles' (1982) 91(2) *Journal of the Polynesian Society* 323

Mahabir, Ron, Andrew Crooks, Arie Croitoru and Peggy Agouris, 'The Study of Slums as Social and Physical Constructs: Challenges and Emerging Research Opportunities' (2016) 3(1) *Regional Studies* 399

Morrison, Noel, 'Building Talented Worker Housing in Shenzhen, China, to Sustain Place Competitiveness' (2014) 51(8) *Urban Studies* 1539

Morrison, Noel, 'Securing Key Worker Housing Through the Planning System' in Sarah Monk and Christine Whitehead (eds), *Making Housing More Affordable: The Role of Intermediate Tenures* (Wiley-Blackwell, 2010)

Moser, David, John Evans and Kim Clair, 'The Effects of Horizontal and Exchange in Equity on Tax Reporting Decisions' (1995) 7(4) *The Accounting Review* 619

Reckers, Philip, Debra Sanders and Stephen Roark, 'The Influence of Ethical Attitudes on Taxpayer Compliance' (1994) 47(4) *National Tax Journal* 825

Sato, Ian, 'Welfare Regime Theories and the Japanese Housing System' in Yosuke Hirayama and Richard Ronald (eds), *Housing and Social Transition in Japan* (Routledge, 2006)

Scanlon, Kathleen, 'Targeting Groups: Key Workers' Needs and Aspirations' in Sarah Monk and Christine Whitehead (eds), *Making Housing More Affordable: The Role of Intermediate Tenures* (Wiley-Blckwell, 2010)

Sillitoe, Paul and Carl Filer, 'What Local People Want with Forests: Ideologies and Attitudes in Papua New Guinea' in Emma Gilberthorpe and Gavin Hilson (eds),

Natural Resource Extraction and Indigenous Livelihoods: Development Challenges in an Era of Globalization (Routledge, 2016)

Smith, Chris and Pun Ngai, 'The Dormitory Labour Regime in China as a Site for Control and Resistance' (2006) 17(8) *The International Journal of Human Resource Management* 1456

Smith, Kent and Karyl Kinsey, 'Understanding Taxpayer Behaviour: A Conceptual Framework with Implications for Research' (1978) 21(4) *Law and Society Review* 639

Staudt, Ned, 'The Hidden Costs of the Progressivity Debate' (1997) 50(4) *Vanderbilt Law Review* 919

United Nations Human Rights Office of the High Commissioner, 'Housing Rights Assessment Mission to Papua New Guinea' (Report, 31 December 2010) <https://pacific.ohchr.org/docs/PNG_Housing Rights Mission Report 2010_July2011.doc>

Wangi, Thomas, Justin Ondopa and Eugene Ezebilo, 'Housing Allowance for Public Servants in Papua New Guinea: Does it Meet Housing Affordability Criteria?' (2017) 10(3) *National Research Institute Spotlight* 1

Wener, Richard, Gary Evans and Pier Boately 'Commuting Stress: Psychophysiological Effects of a Trip and Spillover into the Workplace' (2005) 1924(1) *Journal of the Transportation Research Board* 112

Weichselbaumer, Doris and Rudolf Winter-Ebmer, 'A Meta-Analysis on the International Gender Wage Gap' (2005) 19(3) *Journal of Economic Surveys* 479

Wood, Geoffrey, Adrian Wilkinson and Mark Harcourt, 'Age Discrimination and Working Life: Perspectives and Contestations – A Review of the Contemporary Literature' (2008) 10(4) *International Journal of Management Reviews* 425

B *Other*

Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women*, 46th sess, CEDAW/C/PNG/CO/32010 (12-30 July 2010). <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/PNG/CO/3&Lang=En>

Devos, Ken, Francis Odhuno, Mehmet Özmen and Thomas Wangi, 'Public Perceptions About Housing Benefits Tax in Papua New Guinea' (Discussion Paper No 167, National Research Institute, 2019)

Endekra, Belden, Flora Kwapena and Charles Yala, 'Understanding Property Price Movements in Port Moresby: Lessons from a Price Tracking Experiment' (Issues Paper No 14, National Research Institute, 2015)

National Statistical Office of Papua New Guinea, *2009-2010 Papua New Guinea Household Income and Expenditure Survey, Summary Tables* (2011)

Papua New Guinea Department of Treasury, *National Budget 2017 Volume 1: Economic Development and Policies* (2016)

Papua New Guinea Ministry of Housing, *National Housing Policy* (1994)

Papua New Guinea Ministry of Housing, *National Housing Policy* (2002)

Papua New Guinea Taxation Review Committee, *Papua New Guinea Taxation Review: Report to the Treasurer* (Vol 1 and 2, 2015)

Secretariat of the Pacific Community, 'Pacific Island Population Estimates and Projections' (Statistics, 2016) <https://prism.spc.int/images/Population_Projections_by_PICT.xlsx>

Sharp, Timothy, John Cox, Cederwin Spark, Stephanie Lusby and Michelle Rooney, 'The Formal, the Informal, and the Precarious: Making a Living in Urban Papua New Guinea' (Discussion Paper No 2015/2, ANU State, Society and Governance in Melanesia, 2015).

Stretton, Alan, *Urban Housing Policy in Papua New Guinea* (Institute of Applied Social and Economic Research Monograph 8, 1979)

Webster, Thomas, Sadish Chand and Lindsay Kutan, Property and Housing Policy Development' (Discussion Paper No 149, National Research Institute, 2016)

Yala, Charles, 'Land Reform in Papua New Guinea: Quantifying the Economic Impacts' (Discussion Paper, National Research Institute, 2015)

AN INVESTIGATION OF THE ATTITUDES OF BUSINESS TAXPAYERS TOWARDS THE MALAYSIAN GOODS AND SERVICES TAX AND ITS POTENTIAL MANAGERIAL BENEFITS

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ABSTRACT

The Malaysian Goods and Services Tax ('GST') was implemented in April 2015 to replace the Sales and Services Tax ('SST'), as part of the Malaysian tax reform, which was aimed at reducing the country's budget deficit by improving its revenue collection system. This study is part of a major project that investigated the start-up compliance costs of GST for Malaysian business taxpayers. Sixty-eight questionnaires were received from businesses that were registered for GST. This research applied the Theory of Planned Behaviour model to investigate business taxpayers' attitudes towards the Malaysian GST and its potential managerial benefits. A five-point Likert attitude scale was employed to measure the attitudes of businesses towards the introduction of the GST in Malaysia.

Prior studies report that Malaysian business enterprises incurred high mean gross GST start-up compliance costs. The findings of this investigation confirm that there is a direct relationship between business attitudes towards GST compliance and start-up compliance costs. Overall, respondents strongly disagreed with the statement 'I do not mind doing GST work'. Further, those who indicated that GST is unreasonably complicated, reported higher average GST start-up compliance costs. Counter-intuitively, businesses that supported the government's tax reform also incurred higher average GST start-up compliance costs.

This study found that some businesses derived managerial benefits from complying with the GST. The managerial benefits include improved accounting information systems, improved controls to prevent theft and fraud, as well as savings in accounting costs by using internal staff to maintain records. Surprisingly, businesses that expected to derive managerial benefits incurred higher costs than those who did not expect to receive such benefits. This paper concludes with some policy implications for Malaysia and possibly for other countries yet to introduce a GST.

Keywords: Malaysian goods and services tax, taxpayers' attitudes/perceptions, compliance costs, managerial benefits

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I INTRODUCTION

The Malaysian Government enacted the *Goods and Services Act 2014* (Malaysia) ('*GST Act*') on 1 April 2015 by introducing a 6 per cent Goods and Services Tax ('GST'). The *GST Act* replaced the *Sales Tax Act 1972* (Malaysia) and the *Services Tax Act 1975* (Malaysia), which were jointly referred to as the Sales and Services Tax ('SST'). GST is a broad-based consumption tax that allows some food items to be zero-rated (i.e. GST free). GST impacted heavily on Small and Medium-sized Enterprises ('SMEs') in Malaysia. This negative impact is far-reaching as SMEs play a pivotal role in the Malaysian economy given that they contribute significantly to employment (about 65 per cent).[1] In Malaysia, SMEs are defined as those that do not exceed MYR50 million annual turnover, and those that do not exceed 200 full-time employees.[2] Reports have confirmed the contribution that Malaysian SMEs make to business establishments. For example, the 2016 Economic Census reported that Malaysian SMEs accounted for 97 per cent of total business establishments, but only 36 per cent of Gross Domestic Product ('GDP') in 2015, which is below the 50 per cent of GDP average for high-income countries.[3] Despite their significant contribution to the economy, Malaysian SMEs are continually disadvantaged by a complex taxation system and other myriad government regulatory requirements.[4]

As part of its major policy reversal, the Malaysian Government reduced the GST from 6 per cent to 0 per cent on 1 June 2018 and reintroduced the SST in September 2018.[5] This policy reversal presented businesses with financial and time costs as they, once again, had to change and update their accounting systems. The authors of this paper recognise the importance of political debate around the Malaysian GST and its subsequent repeal. Notwithstanding, the discussion on potential compliance costs and/or taxpayer attitudes resulting from the abolishment of this tax is beyond the scope of this paper.

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1 Ali Salman Saleh and Nelson Oly Ndubisi, 'An Evaluation of SME Development in Malaysia' (2006) 2(1) *International Review of Business Research Papers* 1; T Ramayah, N Ismail and KP Ling, 'An Exploratory Study of Internet Banking in Malaysia' (Conference Paper, International Conference on Management of Innovation and Technology, October 2002).

2 SME Corporation, 'SME Definitions' (Web Page, 2020) <https://www.smecorp.gov.my/index.php/en/policies/2020-02-11-08-01-24/sme-definition>.

3 See, eg, Organisation for Economic Co-operation and Development, 'Economic Surveys: Malaysia, (Economic Assessment, November 2016) 37 <https://www.oecd.org/eco/surveys/Malaysia-2016-OECD-economic-survey-overview.pdf>.

4 Nthati Rametse and Sue Yong, 'Small Business Taxpayers' Attitudes to Complying with a Tax System: Lessons and Experiences from Australia and New Zealand' (2009) 1(1) *Journal of Applied Law and Policy* 83, 102.

5 International Bureau of Fiscal Documentation, 'Malaysia Declares "Abolishment" of Goods and Services Tax from 1 June 2018' (Article, 17 May 2018) <https://www.ibfd.org/IBFD-Tax-Portal/News/Malaysia-declares-abolishment-Goods-and-Services-Tax-1-June-2018>.

Prior studies have shown that frequent tax reforms burden businesses, particularly small enterprises.[6] Taxpayers may experience and exhibit positive or negative attitudes as a result of tax reforms. Positive attitudes arise where the tax system is easy to comply with, or where enterprises support government tax reforms due to the benefits of tax compliance.[7] The benefits of complying with a GST system may include cash flow and managerial benefits.[8] Conversely, tax reforms may lead to negative attitudes among taxpayers, particularly where taxpayers perceive that a tax system is complex and where there is an initial negative reaction towards a newly legislated tax requirement.[9] In Malaysia, businesses generally opposed the Malaysian Government's decision to introduce a GST,[10] which potentially negatively influenced their attitudes towards the tax reforms.

This study is part of a larger project, which investigated the start-up compliance costs of the GST for SMEs operating in Malaysia during the period 1 April 2012 to 30 March 2015. Relevantly, compliance costs are those costs incurred by taxpayers — or third parties such as businesses — in meeting the requirements laid upon them in complying with a given tax structure, over and above payment of the tax itself.[11] Start-up compliance costs are those costs that are incurred prior to the introduction of the GST.[12]

On average, Malaysian enterprises reported having incurred start-up compliance costs of MYR201,831. Accordingly, this article predominantly discusses some key findings concerning the attitudes of business taxpayers towards the Malaysian GST. The paper also reports on managerial benefits that may arise as a result of complying with GST regulations. The literature indicates that, generally, businesses and tax agents have perceived tax compliance negatively.[13] One of the major Australian start-up compliance costs studies conducted by Rametse and Pope found that, although businesses supported the Australian Government's overall taxation reforms, others found it unreasonably complicated and consequently, minded doing their GST compliance work.[14]

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6 Tshepiso Makara and Nthati Rametse, 'Taxpayer Attitudes, Compliance Benefits Perceptions and Compliance Costs of the Value Added Tax System in Botswana' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 246 ('Taxpayer Attitudes, Benefits and Costs of VAT in Botswana').

7 Nthati Rametse and Jeff Pope, 'Start-Up Compliance Costs of the GST: Empirical Evidence from Western Australian Small Businesses' (2002) 17(4) *Australian Tax Forum* 407.

8 Tshepiso Makara and Nthati Rametse, 'Estimates of the Cash Flow and Managerial Benefits of Value Added Tax in Botswana' (2017) 23(4) *New Zealand Journal of Taxation Law and Policy* 422 ('Cash Flow and Managerial Benefits of VAT in Botswana').

9 Rametse and Yong (n 4).

10 Nthati Rametse et al, 'Estimating Start-up Compliance Costs of the Malaysian Goods and Services Tax for Small- and Medium-Sized Enterprises' (2020) 26(2) *New Zealand Journal of Taxation and Policy* 153.

11 Cedric Sandford, Michael Godwin and Peter Hardwick, *Administrative and Compliance Costs of Taxation* (Institute for Fiscal Studies, 1989).

12 Rametse and Pope (n 7).

13 Rametse and Yong (n 4).

14 Rametse and Pope (n 7).

Tax law complexity has been discussed in the literature and found to impact negatively on compliance costs. In fact, tax law complexity has been reported as the main driver of compliance costs.[15] Such complexity tends to be felt mostly by taxpayers who must follow self-assessment compliance requirements. In some cases, taxpayers struggle to keep up-to-date with frequent changes in the tax law.[16] Tran-Nam summarises these complexity issues into three main categories, namely: legal complexity, effective/economic complexity, and compliance complexity.[17]

In addition to the above objectives, this study examines the relationship between Malaysian business' attitudes towards the introduction of GST and associated start-up compliance costs. Studies have confirmed that this relationship exists and, as one would expect, businesses that do not mind doing GST work, that believe GST is not unreasonably complicated, and who support the overall government tax reforms, tend to have lower start-up costs than those who are more critical.[18]

As confirmed by Makara and Rametse, businesses that found Botswana's Value Added Tax ('VAT') — also known as Goods and Services tax in other countries — to be burdensome have higher VAT compliance costs.[19] Contrary to expectation, the current study reports that businesses supporting the Malaysian Government's tax reform incurred higher average GST start-up compliance costs. What sets this current research apart from other findings, is that other studies (for example, Rametse and Pope) confirm that businesses that do not support the government's tax reforms incur higher average GST start-up compliance costs.[20] However, it is important to exercise caution when interpreting the findings of the current study, as lower respondents might have influenced costs.

This paper presents taxpayer attitudes towards the former Malaysian GST. A questionnaire, which yielded 68 respondents, was used to collect data from Malaysian business taxpayers, which was mainly comprised of SMEs.

Against this background, the remainder of the paper is structured as follows: Part II provides the theoretical/conceptual strategy; Part III then explores previous research concerning various perceptions towards tax complexity/simplification as well as taxpayers' perceptions of the Malaysian tax system, and taxpayer attitudes towards the GST/VAT system; Part IV details the methodology adopted in this study and outlines the

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15 Chris Evans, 'Taxing Personal Gains in Australia: Causes of Complexity and Proposals for Reform' (2004) 19(3) *Australian Tax Forum* 371.

16 Ern Chen Loo, Margaret McKerchar and Ann Hansford, 'Findings on the Impact of Self-Assessment on the Compliance Behaviour of Individual Taxpayers in Malaysia: A Case Study Approach' (2010) 13(1) *Journal of Australian Taxation* 1.

17 Binh Tran-Nam and John Glover, 'Tax Reform in Australia: Impacts of Tax Compliance Costs on Small Business' (2002) 5(3) *Journal of Australian Taxation* 338.

18 Rametse and Yong (n 4).

19 Makara and Rametse, 'Taxpayer Attitudes, Benefits and Costs of VAT in Botswana' (n 6).

20 Rametse and Pope (n 7).

profile of respondents; Part V presents the study's results; and Part VI concludes the article and discusses some policy implications.

II THEORETICAL/CONCEPTUAL MATTERS

The factors that affect the compliance of taxpayers has been discussed by Richardson and Sawyer, and relevantly include economic, structural, demographic/personal, and attitudinal traits.[21] Economic factors incorporate the response of taxpayers to sanctions. Essentially, taxpayers, being utility maximisers, will undertake a cost/benefit analysis and only comply if the benefit of compliance outweighs the associated cost.[22] Additionally, other aspects (e.g. size, location and legal structure of the business) influence tax compliance costs. Some factors, however, are beyond the control of the taxpayer and, therefore, are exogenously determined. These include structural factors such as tax administration, tax complexity, tax rate structures and audit possibility.[23] In line with this, Sandford suggests that, where it is not possible to incorporate all factors into the measurement of compliance costs, taxpayer attitudes may serve as a proxy for many factors,[24] because negative attitudes towards taxes can overstate the perceptions of the compliance costs involved,[25] and overshadow the benefits of taxation.[26] Indeed, taxpayers who find tax burdensome tend to report higher tax compliance costs.[27] Moreover, a direct relationship between the compliance behavior of taxpayers and their peers explains that taxpayers whose peers evade tax tend to follow a similar approach.[28]

This study adopts the Theory of Planned Behaviour ('TPB')[29] to evaluate the influence of taxpayer attitudes on taxpayer behaviour. According to the TPB, 'intentions to perform behaviour of different kinds can be predicted with high accuracy from attitudes toward the behaviour'.[30] The TPB provides a framework (see Figure 1 below) of the relationship

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21 Maryann Richardson and Adrian Sawyer, 'A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects' (2001) 16(2) *Australian Tax Forum* 137. See also Betty Jackson and Valerie Milliron, 'Tax Compliance Research: Findings, Problems and Prospects' (1986) 5 *Journal of Accounting Literature* 125 cited in Richardson and Sawyer (n 21).

22 Cynthia Coleman and Chris Evans, 'Tax Compliance Issues for Small Business in Australia' in Neil Warren (ed), *Taxing Small Business: Developing Good Tax Policies* (Australian Tax Research Foundation, 2003) 147; Richardson and Sawyer (n 21).

23 James Alm, Betty Jackson and Michael McKee, 'Estimating the Determinants of Taxpayer Compliance with Experimental Data' (1992) 45 *National Tax Journal* 107.

24 Cedric Sandford et al, *Costs and Benefits of VAT* (Heinemann Educational Books, 1981).

25 Ian Wallschutzky and Brian Gibson, 'Small Business Cost of Tax Compliance' (1993) 10(4) *Australian Tax Forum* 511, 541.

26 Rametse and Yong (n 4).

27 Makara and Rametse, 'Taxpayer Attitudes, Benefits and Costs of VAT in Botswana' (n 6).

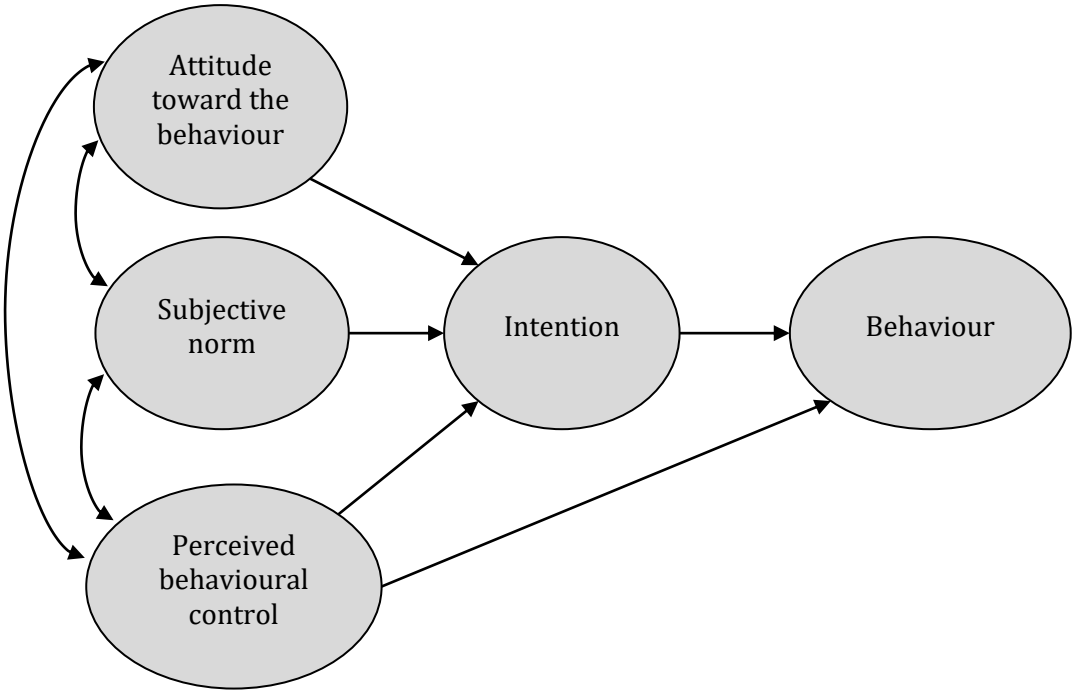
28 Julie Collins, Valerie Milliron and Daniel Toy, 'Determinants of Tax Compliance: A Contingency Approach' (1992) 14(1) *The Journal of the American Taxation Association* 1.

29 Icek Ajzen, 'The Theory of Planned Behavior' (1991) 50(2) *Organizational Behavior and Human Decision Processes* 179.

30 Ibid 179.

between attitudes, intention and behaviour, with intention as an antecedent to behaviour. Essentially, the intention to behave in a certain way is a good predictor of whether a person engages in that behaviour.[31] Thus, taxpayers' attitudes can be a significant reflection of the complexity/simplicity of the tax system and the intention to comply. For example, if taxpayers find a tax system to be simple, they are expected to comply. As such, the knowledge of the attitudes of taxpayers towards tax is critical and should be incorporated in tax policy decision-making.

FIGURE 1: THE THEORY OF PLANNED BEHAVIOUR[32]



III LITERATURE REVIEW

This Part proceeds to explore the literature concerning various perceptions towards tax complexity/simplification of GST/VAT, taxpayers' perceptions of the Malaysian tax system, and studies that have explored taxpayer attitudes towards the GST/VAT system.

A *GST/VAT Complexity/Simplification*

The complexity of GST/VAT systems has been a major concern for taxpayers in many countries. A complex GST/VAT system makes compliance very challenging and consequently, leads to higher compliance costs for taxpayers. Pope asserts that 'compliance costs are one measure of the complexity of any tax, with high costs implying

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31 Zainol Bidin, Faridahwati Mohd-Shamsudin and Zainudin Othman, 'Using Theory of Reasoned Action to Explain Taxpayer Intention to Comply with Goods and Services Tax' (2014) 5(1) *International Journal of Business and Social Science* 131.

32 Ajzen (n 29) 182.

a complex tax regime and vice versa'.[33] Essentially, complex GST/VAT requirements lead to high GST/VAT compliance costs[34] and breeds resentment among small business owners,[35] which, consequently, may lead to tax evasion acts by some businesses.[36] Indeed, 'a complex VAT design has higher compliance costs that burden smaller businesses the most',[37] and increases noncompliance as it gives taxpayers the incentive to misclassify goods (as exempt or zero-rated) in an attempt to avoid tax.[38]

Conceptual matters relating to complexity of tax systems have been discussed in the literature. Relevantly, these include: legal complexity, which refers to the difficulty in reading and understanding the income tax law;[39] effective/economic complexity, which refers to the difficulty in determining the correct tax liability in terms of their effort in raising tax revenue;[40] and compliance complexity,[41] being the difficulty in complying with tax requirements, such as completing forms and recordkeeping.[42]

Researchers have discussed varying tax simplification measures to address tax complexity issues. Several studies have investigated the design of GST/VAT systems to uncover design elements that can potentially minimise its complexity. The literature provides best-practice design features of GST/VAT systems that are aimed at simplification.[43]

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33 Jeff Pope, 'The Compliance Costs of Taxation in Australia and Tax Simplification: The Issues' (1993) 18(1) *Australian Journal of Management* 69, 70.

34 Makara and Rametse, 'Taxpayer Attitudes, Benefits and Costs of VAT in Botswana' (n 6).

35 Cynthia Coleman and Lynn Freeman, 'Changing Attitudes of Small Business Owners to the ATO in a Tax Reform Environment' (Conference Paper, Australasian Tax Teachers Association Conference, 5–7 February 1999) 13.

36 Sandford, Godwin and Hardwick (n 11).

37 Tshepiso Makara and Adrian Sawyer, 'Towards Simplification of Value Added Tax Compliance for Small Businesses in Botswana – Lessons from New Zealand' (2019) 14(1) *Journal of the Australasian Tax Teachers Association* 77.

38 United States Government Accountability Office, *Value Added Tax. Lessons Learned from Other Countries on Compliance Risks, Administrative Costs, Compliance Burden and Transition: Report to Congressional Requesters* (Report, United States Government Accountability Office, 2008) 4–5.

39 Tran-Nam and Glover (n 17).

40 Binh Tran-Nam, 'Tax Simplification and the Operating Costs of the Australian Federal Tax System' (Conference Paper, Australasian Tax Teachers Association Conference, 5–7 February 1999).

41 Edward McCaffrey, 'The Holy Grail of Tax Simplification' (1990) 1990(5) *Wisconsin Law Review* 1267.

42 Coleman and Evans (n 22).

43 See Rick Krever, *VAT in Africa* (Pretoria University Law Press, 2008) 9; Ine Lejeune, 'The EU VAT Experience: What Are the Lessons?', Tax Analysts (Article, 2011) <http://www.taxhistory.org/www/freefiles.nsf/Files/LEJEUNE-21.pdf/%24file/LEJEUNE-21.pdf>; United States Government Accountability Office (n 38); Alan Tait, *Value Added Tax: International Practice and Problems* (International Monetary Fund, 1988); Sijbren Cnossen, 'Design of the Value Added Tax: Lessons from Experience' in Javad Khalilzadeh-Shirazi and Anwar Shah (eds), *Tax Policy in Developing Countries* (World Bank, 1991); Liam Ebrill et al, *The Modern VAT* (International Monetary Fund, 2001); International Tax Dialogue, 'The Value Added Tax: Experiences and Issues', *International Tax Dialogue* (Website, 2005) <www.itdweb.org>; Richard Bird and Pierre-Pascal Gendron, *The VAT in Developing and Transitional Countries* (Cambridge University Press, 2007); Milka Casanegra de

A detailed discussion of the literature concerning the optimal design of a simple GST/VAT system can be found in a recent study undertaken by Makara and Sawyer.[44] It must be noted that some of the studies focused on a conceptually simple GST/VAT. In practice, however, the authors suggest that GST/VAT simplification measures should be adopted with due consideration of the relevant country's prevailing infrastructure (for adoption of e-filing, especially in developing countries), economy and the revenue needs of the country.

Furthermore, it must be noted that the issue of tax simplification is complicated. Although research advocates for tax systems to be simplified, there is no agreement as to how it can be achieved.[45] Tran-Nam et al see tax simplification remaining as elusive as ever.[46] In fact, others maintain that some degree of tax system complexity is necessary. According to James, Sawyer and Wallschutzky, 'modern tax systems are often used to advance a range of policy objectives and have to operate in a complex and changing socio-economic environment in a way that is broadly acceptable to taxpayers'.[47] This calls for a determination of some sort of balance between simplicity and complexity in tax systems. So far, the question of the degree of simplicity — versus the degree of complexity that should be inherent in a tax system — remains unanswered.

B *Taxpayers' Perceptions of the Malaysian Tax System*

Taxpayers' perceptions of the Malaysian tax system have been investigated by several studies over the years, however, the focus of these studies have mainly concerned Personal Income Tax ('PIT') and Corporate Income Tax ('CIT') (see Table 1 below). Accordingly, there is gap in research regarding GST compliance attitudes and behaviour in Malaysia. Overall, taxpayers perceive that the Malaysian tax system is complex. This complexity, which affects SMEs the most, increases the compliance burden and compliance costs, and further influences non-compliance behaviour among taxpayers. In addition, the studies report that tax knowledge is low among Malaysian taxpayers. To counter this deficiency in tax knowledge, some taxpayers engage external tax professionals to assist them with tax compliance, which can result in higher compliance costs. With regards to perception of fairness, the literature reports mixed findings.

Jantscher, 'Problems of Administering a Value Added Tax in Developing Countries' (Working Paper No 86/15, International Monetary Fund, 1 December 1986); Yige Zu, 'VAT/GST Thresholds and Small Businesses: Where to Draw the Line?' (2018) 66(2) *Canadian Tax Journal* 309, 312; Michael Keen and Jack Mintz, 'The Optimal Threshold for a Value Added Tax' (2004) 88(3–4) *Journal of Public Economics* 559; Parthasarathi Shome, 'Tax Administration and the Small Taxpayer' (Policy Discussion Paper No 04/2, International Monetary Fund, 2004); Makara and Sawyer (n 37); Kathryn James, *The Rise of the Value-Added Tax* (Cambridge University Press, 2015).

44 Makara and Sawyer (n 37).

45 Simon James, Adrian Sawyer and Ian Wallschutzky, 'The Complexities of Tax Simplification: Progress in Australia, New Zealand and the United Kingdom' (1998) 14(1) *Australian Tax Forum* 29, 30.

46 Binh Tran-Nam et al, 'Managing Tax Complexity: The State of Play after Henry' (2016) 35(4) *Economic Papers* 347.

47 Simon James, Adrian Sawyer and Ian Wallschutzky, 'Tax Simplification: A Review of Initiatives in Australia, New Zealand and the United Kingdom' (2015) 13(1) *eJournal of Tax Research* 280, 283.

TABLE 1: TAXPAYERS' PERCEPTIONS OF THE MALAYSIAN TAX SYSTEM

AUTHORS	COUNTRY (YEAR)	KEY FINDINGS
Hanefah[48]	Malaysia (1996)	▪ Respondents reported positive perceptions regarding the implementation of the self-assessment system. ▪ Taxpayers perceived the Malaysian tax law to be complex. ▪ Recordkeeping for tax purposes and tax law ambiguity were major factors that hindered voluntary compliance.
Abdul-Jabbar and Pope[49]	Malaysia (2009)	▪ Malaysian corporate taxpayers perceived the CIT to be complex. ▪ Due to tax complexity, most SMEs employed tax professionals to assist them with tax compliance.
Kasipillai[50]	Malaysia (2009)	▪ There is a direct relationship between tax system complexity and the level of the compliance costs incurred by taxpayers.
Mohd Isa[51]	Malaysia (2012)	▪ Tax complexity influenced compliance behaviour negatively. ▪ Tax computations, recordkeeping and tax ambiguity are the three dimensions of tax complexity that are encountered by Malaysian corporate taxpayers. ▪ The following areas were reported by taxpayers as more difficult: estimating income tax payable, increasing the burden of recordkeeping for income tax purposes, and understanding income tax legislation.
Sapiei, Kasipillai and Eze[52]	Malaysia (2014)	▪ Evidence of a significant positive relationship between tax complexity and tax non-compliance behaviour exists. ▪ There is a positive relationship between: perceived tax deterrence sanctions and non-compliance of corporate taxpayers; perceived fairness in the tax rate structure and non-compliance of corporate taxpayers; perceived fairness of the tax system and non-compliance of corporate taxpayers; and perceived level of psychological costs and non-compliance of corporate taxpayers.

48 Mustafa Hanefah, 'An Evaluation of the Malaysian Tax Administrative System and Taxpayers Perceptions Towards Assessment Systems, Tax Law Fairness and Tax Law Complexity' (PhD Thesis, University Utara Malaysia, 1996).

49 Hijattulah Abdul-Jabbar and Jeff Pope, 'Tax Attitudes and Compliance Among Small and Medium Enterprises in Malaysia' (2009) 15(3) *New Zealand Journal of Taxation Law and Policy* 198.

50 Jeyapalan Kasipillai, *A Comprehensive Guide to Malaysian Taxation: Under Self-Assessment System* (McGraw-Hill, 2009), cited in Appadu Santhariah et al, 'The Implementation of the Goods and Services Tax in Malaysia: Potential Issues Perceived by Business Taxpayers' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 351.

51 Khadijah Mohd Isa, 'Corporate Taxpayers' Compliance Variables under Self-Assessment System in Malaysia: A Mixed Methods Approach' (PhD Thesis, Curtin University, 2012) 153–177.

52 Noor Sharoja Sapiei, Jeyapalan Kasipillai and Uchenna Cyril Eze, 'Determinants of Tax Compliance Behaviour of Corporate Taxpayers in Malaysia' (2014) 12(2) *eJournal of Tax Research* 383, 402–403.

C *Studies of Taxpayer Attitudes Towards GST/VAT Systems*

Studies regarding taxpayer attitudes towards GST/VAT systems are scanty. To date, only a few studies have investigated the attitudes of business taxpayers towards GST/VAT systems in Malaysia (see Table 2 below). As such, the significance of this study in contributing to the literature in this area is emphasised. Most existing literature reports that taxpayers find their country's GST/VAT system to be unfair, costly and unreasonably complex.[53] Due to this complexity, taxpayers mind doing their GST/VAT work.[54] Thus, their attitude towards potential managerial benefits is negative as they see it as a compliance burden rather than a benefit, since they lack time to monitor their finances as closely as they should.[55]

TABLE 2: STUDIES OF TAXPAYER ATTITUDES TOWARDS GST/VAT SYSTEMS

AUTHORS	COUNTRY (YEAR)	KEY FINDINGS
Sandford, Godwin and Hardwick[56]	United Kingdom (1989)	▪ Respondents felt that the VAT was unreasonably complicated (54 per cent). ▪ Respondents minded doing their VAT work.
Adams and Webley[57]	United Kingdom (2001)	▪ Some taxpayers engage in mental accounting (thinking that the VAT collected belongs to them) for VAT money and, as such, resent remitting the VAT money to the revenue office. ▪ Taxpayers resent acting as unpaid tax collectors for the government.
Rametse[58]	Australia (2006)	▪ Small businesses (53 per cent) find GST to be unreasonably complicated and, therefore, mind doing their GST work (45 per cent). ▪ Although many small businesses in Australia believe that GST is unreasonably complicated, the majority support the government's tax reform.

53 Yesegat reports the findings that contradict this in an Ethiopian study. See Wollela Abehodie Yesegat, 'Value Added Tax in Ethiopia: A Study of Operating Costs and Compliance' (PhD Thesis, University of New South Wales, 2009) 149–152.

54 Sandford, Godwin and Hardwick (n 11); Nthati Rametse, 'Start-Up Compliance Costs of the Goods and Services Tax (GST) for Small Businesses in Australia' (PhD Thesis, Curtin University, 2006) 151–152 ('Start-up Compliance Costs of GST'); Lynley Woodward and Lin Mei Tan, 'Small Business Owners' Attitudes Toward GST Compliance: A Preliminary Study' (2015) 30(3) *Australian Tax Forum* 517, 534; Makara and Rametse, 'Taxpayer Attitudes, Benefits and Costs of VAT in Botswana' (n 6).

55 Rametse and Pope (n 7).

56 Sandford, Godwin and Hardwick (n 11).

57 Caroline Adams and Paul Webley, 'Small Business Owners' Attitudes on VAT Compliance in the UK' (2001) 22(2) *Journal of Economic Psychology* 195.

58 Rametse, 'Start-up Compliance Costs of GST' (n 54).

Rametse and Yong[59]	Australia and New Zealand (2009)	▪ Australian and New Zealand small businesses reported similar views as regards their tax obligations and tax complexity. Respondents in both studies resented their role of acting as 'unpaid tax collectors' for the government and regarded the relevant GST system as complex.
Yesegat[60]	Ethiopia (2009)	▪ Business taxpayers (58 per cent) perceived VAT to be a simple method of collecting tax and not unreasonably complicated (53 per cent). ▪ Most of the respondents (74 per cent) did not mind doing their VAT work. ▪ The taxpayers felt that they did not spend too much time on their VAT affairs.
Woodward and Tan[61]	New Zealand (2015)	▪ Most small business owners perceived the New Zealand GST system as unfair and burdensome. ▪ Evidence of mental accounting is reported.
Ching, Kasipillai and Sarker[62]	Malaysia (2017)	▪ Business taxpayers viewed the Malaysian GST implementation and regulations negatively. ▪ Majority of the respondents indicated that the GST regulations were 'detrimental to their businesses because compliance costs further increase the escalating cost of doing business in Malaysia'.[63] ▪ The costs of GST compliance were viewed as burdensome by all research participants.
Makara and Rametse[64]	Botswana (2018)	▪ Business taxpayers find the VAT system to be burdensome, unreasonably complicated and costly and, as such, resent doing their tax compliance work. ▪ Taxpayers who reported negative attitudes towards the VAT system also reported higher VAT compliance costs than those who did not. ▪ However, although taxpayers perceived VAT compliance costs to be high, these costs are, to some degree, mitigated by compliance benefits in the form of better management and record keeping.

59 Rametse and Yong (n 4).

60 Yesegat (n 53).

61 Woodward and Tan (n 54).

62 Yong Mun Ching, Jeyapalan Kasipillai and Ashutosh Sarker, 'GST Compliance and Challenges for SMEs in Malaysia' (2017) 15(3) *eJournal of Tax Research* 457.

63 Ibid 470.

64 Makara and Rametse, 'Taxpayer Attitudes, Benefits and Costs of VAT in Botswana' (n 6).

Santhariah et al[65]	Malaysia (2018)	▪ Business taxpayers were poorly prepared for GST implementation, with only 9 per cent claiming to be substantially ready. ▪ Only 22 per cent of the respondents stated that they were well-equipped with computer systems for GST purposes. ▪ Over 25 per cent of eligible potential GST registrants (who met the registration threshold) stated that they would not register ▪ Over 74 per cent of respondents felt that GST would place an additional compliance burden on them. ▪ Only 24 per cent of respondents were confident that they would receive the required help and assistance from the Royal Malaysian Customs Department ('RMCD'). ▪ Whilst larger businesses confirmed that they were well-prepared for GST, smaller businesses experienced greater stress in their preparation.

Numerous studies have reported evidence of mental accounting for VAT money.[66] It is possible that the different ways of mental accounting for VAT money influences the compliance of some businesses that believe the VAT money they collect is theirs.[67] As such, those businesses resent remitting the tax to the revenue office. Taxpayers also resent acting as unpaid tax collectors for the government. Such resentment leads to negative attitudes towards tax compliance.[68]

Contrary to popular findings in studies of taxpayer attitudes, Yesegat reports that most of the Ethiopian taxpayers (58 per cent) perceive VAT as a simple method of collecting tax and not unreasonably complicated (53 per cent). Yesegat's findings do not corroborate with the current study in which business taxpayers confirmed the Malaysian GST system was complex. Moreover, Yesegat does not expound on why business taxpayers perceive that the relevant VAT collection system is simple. However, this may be why most of the respondents (74 per cent), in Yesegat's study, do not mind doing VAT work. Additionally, the taxpayers felt that they did not spend too much time on VAT affairs. As regards compliance costs, those that perceive their VAT compliance costs to be significant (41 per cent) are like those that find their VAT compliance costs to be insignificant (49 per cent).[69]

65 Santhariah et al (n 50).

66 Adams and Webley (n 57) 208; Woodward and Tan (n 54) 534.

67 Adams and Webley (n 57) 208.

68 Ibid 206.

69 Yesegat (n 53) 149–152.

D *Taxpayer Attitudes Towards the Malaysian Goods and Services Tax*

Through the introduction of GST in Malaysia, the Government sought to improve the efficacy of the country's overall tax system by replacing the SST with a GST.[70] Mixed feelings regarding the elimination of the SST and subsequent implementation of a GST have been reported by business taxpayers in Malaysia. In a study by Aziz, Bidin and Marimuthu, the Malaysian business community indicated a positive attitude towards the implementation of the GST. The authors have, however, not provided the reasons for this positive attitude.[71] Nevertheless, these findings are important as they confirm those of prior studies that have investigated tax implementation issues. For example, Australian studies have reported that SMEs in Australia were in support of the overall government tax reforms, notwithstanding the high implementation costs of the tax system,[72] as the tax reform encompassed a simple and fair taxation system.[73]

In other Malaysian studies, however, taxpayers reported that they did not support the Malaysian GST tax reform.[74] In fact, taxpayers viewed the Malaysian GST implementation and regulations negatively,[75] and considered that the GST regulations were 'detrimental to their businesses because compliance costs further increase[d] the escalating cost of doing business in Malaysia'.[76]

IV RESEARCH STRATEGY

This Part outlines the research methodology adopted in the context of this study.

A *Data Collection*

A questionnaire was used to collect information from Malaysian SMEs. A questionnaire methodology was applied as a result of limited resources and the difficulty in obtaining responses from SMEs in Malaysia. Furthermore, due to the confidentiality of taxpayer data, the RMCD — who administers the GST in Malaysia — was unable to provide a list of the GST registered businesses for this study. The small sample size of this study makes it impossible to generalise the results to the entire SMEs population of Malaysia.

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70 Rametse et al (n 10).

71 Saliza Abdul Aziz, Bidin Zainol Bidin and Munusamy Marimuthu, 'The Effect of Attitude and Understanding Towards GST Satisfaction Among Business Communities in Malaysia' (2017) 23(4) *Advanced Science Letters* 3120.

72 Rametse and Pope (n 7); Nthati Rametse, 'Measuring the Costs of Implementing the Former Carbon Tax for Australian Liable Entities' (2015) 21(2) *New Zealand Journal of Taxation and Policy* 190.

73 Rametse and Yong (n 4) 100.

74 Rametse et al (n 10).

75 Mun Ching, Kasipillai and Sarker (n 62) 469–471.

76 Ibid.

The questionnaire was predominantly self-administered to participants at GST seminars conducted by the Malaysian Institute of Accountants. These seminars were attended by various business organisations and accounting firms as follows:

1. Associated Chinese Chamber of Commerce and Industry of Malaysia;
2. Kuala Lumpur Malay Chamber of Commerce;
3. Malaysian Associated Indian Chamber of Commerce; and
4. Accountants and accounting staff from accounting firms.

The questionnaires were distributed to 200 business taxpayers at these GST seminars held at the Malaysian Institute of Accountants in Kuala Lumpur. After data validation for accuracy and reliability, 68 responses were received (34 per cent response rate).

B *Measurement (Likert Scale)*

To determine the SMEs attitudes towards the introduction of the Malaysian GST, the same questionnaire included a five-point Likert scale which listed attitudinal/perception statements towards various aspects of the Malaysian GST. Kumar notes that the Likert attitude scale 'is based upon the assumption that each statement/item on the scale has equal "attitudinal value", "importance" or "weight" in terms of reflecting an attitude towards the issue in question'.[77]

The attitudes solicited covered three main areas of start-up compliance costs. Relevantly these included:

1. Doing GST work, complexity, as well as support and service quality from RMCD;
2. Reasons for employing external tax professionals; and
3. Deriving potential managerial benefits.

The questionnaire also requested that respondents provide qualitative comments on the Malaysian GST. The additional information provided by SMEs was used to augment attitudinal information arising from the five-point Likert scale.

1 *Doing GST Work, Complexity and Support for GST Reforms*

Respondents were requested to indicate, on a five-point Likert scale, their attitudes towards meeting the Malaysian GST compliance obligations. They were asked to indicate if they '*strongly agreed*', '*agreed*', were '*neutral*', '*disagreed*' or '*strongly disagreed*'.

Three major areas of attitudes solicited from the respondents were:

1. I do not mind doing GST work;
2. GST is unreasonably complex and complicated; and
3. Overall, I support Government's tax reforms.

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77 R Kumar, *Research Methodology: A Step-by-Step Guide for Beginner's* (Addison Wesley Longman, 1996) 129.

2 *Reasons for Employing External Tax Professionals*

Respondents were requested to rank, on a five-point Likert scale, the main reasons and/or the extent of importance for employing tax professionals (1 = '*very important*'; 2 = '*important*'; 3 = '*neutral*'; 4 = '*not important*'; and 5 = '*least important*'). As these reasons could not be measured directly, respondents' attitudes were solicited on the implementation of the Malaysian GST for SMEs to suggest relative importance to compliance costs.

Three main reasons for employing external tax professionals are:

1. It is cost effective to hire external tax professionals;
2. To reduce the chance of GST audit by the RMCD; and
3. Not getting the required technical help from the RMCD.

Notably, the results for '*very important*' and '*important*' have been combined in the analysis of this study.

3 *Deriving Potential Managerial Benefits*

Respondents were asked to indicate if they expected to derive managerial benefits from maintaining records for meeting GST compliance benefits. All respondents stated that they would expect to derive such benefits. The respondents were further requested to indicate, on a five-point Likert scale, the extent to which they expected managerial benefits, where: 1 = '*strongly agree*'; 2 = '*agree*'; 3 = '*neutral*'; 4 = '*disagree*'; and 5 = '*strongly disagree*'.

The four major areas of managerial benefits solicited from the respondents were:

1. Improved accounting information
2. Better and improved controls to prevent theft and fraud;
3. Savings in accounting costs using internal staff to keep records; and
4. Better accounting information for forecasting cash flow and profit forecasts.

C *Profile of Respondents*

The legal form of business respondents was dominated by private companies (61.8 per cent), followed by sole proprietorships (19 per cent) and partnerships (15 per cent). The public sector was the lowest, representing 4 per cent of respondents. In terms of the main business activity, the majority of respondents (46 per cent) were working in Professional, Scientific and Technical Services, followed by Wholesale Trading at 19 per cent. Finance, Insurance and Business Services represented 9 per cent of respondents.

Regarding the annual turnover of respondents, it is evident that the majority were in the SMEs category. In particular, the majority were fell into the MYR500,000 to MYR2,999,999 annual turnover range, representing 31 per cent, followed by 21 per cent of respondents from the MYR3,000,000 to MYR14,999,999 annual turnover category. Respondents were initially requested to state their annual turnover figure prior to registering for the GST. A cumulative percentage of 85 per cent of respondents stated

figures from MYR30,000 to MYR15,000,00 confirming the respondents' stated taxable turnovers. Most SME respondents had between 6–19 employees (27 per cent) and 20–50 employees (23 per cent). Around 21 per cent of respondents employed 0–5 people. Most of these SMEs had operated their business for years falling between 10–19 years (38 per cent), 4–9 years (27 per cent) and 20–39 years (19 per cent).

V FINDINGS AND ANALYSIS

In light of the above, this Part will proceed to detail the results of the survey against each of the three attitudes solicited, as stated in Part IV B above.

A *Attitude on Doing GST Work, Complexity and Support for GST Reforms*

Respondents were requested to indicate, on a five-point Likert scale, their attitudes towards GST compliance. They were to indicate if they '*strongly agreed*', '*agreed*', were '*neutral*', '*disagreed*' or '*strongly disagreed*'.

Three major areas of attitudes solicited from the respondents were:

1. I do not mind doing GST work;
2. GST is unreasonably complicated; and
3. Overall, I support Government's tax reforms.

The majority of respondents '*strongly agreed*' and '*agreed*' to the three statements. Of the three statements, respondents '*strongly agreed*' and '*agreed*' to the statement '*GST is unreasonably complicated*' (50 per cent) followed by '*overall, I support Government's tax reforms*' (43 per cent) and '*I do not mind doing GST work*' (37 per cent). Makara and Rametse found that Botswana VAT taxpayers regarded the VAT system as burdensome, unreasonably complicated and costly and, as such, resented doing their tax compliance work.[78] The findings of a prior study by Rametse reveal that SMEs expressed similar views to the findings of the current study, as the majority found the relevant GST to be unreasonably complicated and, consequently, were against doing their GST work.

Generally, complexity and ambiguity of the Malaysian GST system has been confirmed by other researchers.[79] The findings of the current study support those of prior studies, which reported that taxpayers had mixed feelings about the implementation of the Malaysian GST. Businesses in this study support the implementation of the Malaysian GST, but dislike doing GST work. This supports the findings of previous studies.[80] Thus, it is a reasonable view to express negative feelings towards doing GST work if the tax system is complex, (as suggested by multiple recommended tax codes used to map GST-

78 Makara and Rametse, 'Taxpayer Attitudes, Benefits and Costs of VAT in Botswana' (n 6).

79 Hanefah (n 48); Abdul-Jabbar and Pope (n 49).

80 Aziz, Bidin and Marimuthu (n 71); Rametse and Pope (n 7).

related transactions and GST accounting entries in Malaysia)[81] as such complexity makes compliance burdensome.

The relationship between attitudes towards GST work, complexity and support for government tax reforms, as well as mean GST start-up costs was assessed (see Table 3 below).

TABLE 3: ATTITUDE ON DOING GST WORK, COMPLEXITY AND SUPPORT FOR GOVERNMENT'S TAX REFORMS

ATTITUDE(S)		MEAN (MYR)	NUMBER OF RESPONDENTS
I do not mind doing GST work	Strongly Agree	32,696.63	11
	Agree	41,577.20	14
	Neutral	44,604.66	15
	Disagree	56,310.86	19
	Strongly Disagree	26,641.70	9
	Total	**40,366.21**	**68**
GST is unreasonably complicated	Strongly Agree	47,430.30	16
	Agree	53,485.23	18
	Neutral	44,604.66	15
	Disagree	32,696.63	11
	Strongly Disagree	23,614.23	8
	Total	**40,366.21**	**68**
Overall, I support Government tax reforms	Strongly Agree	32,696.63	11
	Agree	53,485.23	18
	Neutral	71,246.36	24
	Disagree	26,641.70	9
	Strongly Disagree	17,962.96	6
	Total	**40,406.58**	**68**

As expected, and in line with prior research,[82] respondents who '*strongly disagree*' and '*disagree*' to the statement '*I do not mind GST work*' incurred higher costs (MYR56,310 and MYR26,641, respectively) compared to those who '*strongly agree*' and '*agree*'. Additionally, respondents who '*strongly agree*' and '*agree*' to the statement '*GST is unreasonably complicated*' incurred higher costs (MYR47,430 and MYR53,485, respectively) than those who disagreed to the statement. Lastly, and counter-intuitively, respondents who supported the Malaysian Government's tax reforms incurred higher costs (MYR32,6976 and MYR53,485, respectively) than those who did not support it.

Overall, respondents who indicated that they did not mind doing GST work, who believe that GST is unreasonably complicated and who support the Malaysian Government's tax reforms incurred higher average GST start-up compliance costs. Findings of this study concur with the compliance costs literature that there is a direct relationship between tax

81 See 'GST Tax Codes (01 June 2018 Onward)' <https://www.biztrak.com/downloads/18052018/GST-Tax-Codes-(01-June-2018-onward).pdf>.

82 See Makara and Rametse, 'Cash Flow and Managerial Benefits of VAT in Botswana' (n 8).

system complexity and the level of tax compliance costs incurred, suggesting that for this study compliance costs tend to increase with increases in tax complexity.[83]

Findings in this study are different from the study by Rametse and Pope[84] which found that respondents who supported the Australian Government's tax reforms incurred lower costs than those who were more critical of the reforms. The explanatory factor for the lower costs could be that respondents possible had adequate internal accounting expertise, hence did not need to outsource external advisers. Additionally, those who were more critical could have overstated their costs as a strategy to lobby the Australian Government to change some of the GST policy issues. One of the prominent GST issues in Australia was that some small businesses resisted the need to be part of the Australian GST system, and hence, lobbied the Australian Government to increase the registration threshold which, at the time of the GST's implementation, was set at AUD50,000. After much lobbying from SMEs, academics and tax professionals, the government increased the GST registration threshold to AUD75,000.[85]

The current study found that although most respondents supported the Malaysian Government's tax reforms, they incurred high mean start-up compliance costs. This suggests that the high costs they incurred can be attributed to efforts to prepare for the implementation of the GST, albeit there was greater stress experienced by smaller business while preparing for the introduction of the GST.[86]

Respondents in this study also stated that they disliked doing GST work. SMEs usually do not have in-house accounting expertise and accordingly, they rely mostly on external expert advice.[87] As stated in qualitative comments in response to this survey, respondents stated that education and information on GST was lacking from the RMCD. Some believed that the RMCD was not ready for the tax reform concerning the implementation of GST. They lacked in GST knowledge, as they could not answer some GST-related questions when approached for advice. Husni noted that by the end of February 2015, 6,443 training programs were conducted by the RMCD and 61,600 people had attended these programs.[88] This suggests that a low number, around 10 people, attended each training program. Since most SME owners and employees did not attend the training seminars, it can be argued that they lacked pertinent knowledge regarding the GST.[89] Moreover, critical respondents could have overstated their costs for the usual strategy of trying to influence the Malaysian Government to change GST policy.

The SME respondents who were more critical of the implementation of the GST and reported higher costs may have generally believed that the cost of getting ready for the

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83 Ibid.

84 Rametse and Pope (n 7).

85 Ibid.

86 Santhariah et al (n 50).

87 Rametse and Pope (n 7).

88 H Husni, '350,054 Companies GST-Ready as of March 11', *New Straits Times* (online, 11 March 2015).

89 Rametse et al (n 10).

GST's implementation outweighed its potential benefits. Moreover, respondents complained that the number of tax codes and continuous revision/changes to the Malaysian GST regulations made it too complex for them to understand, as supported by the literature.[90] It must be noted that at the time of Malaysian GST implementation, there were around thirty-one tax codes.[91] Moreover, in their comparative study regarding the complexity of the GST system, Rametse and Yong[92] found that Australian and New Zealand small businesses reported similar views regarding their tax obligations and tax complexity. All these issues have been discussed as comprising of legal complexity, effective/economic complexity, and compliance complexity.[93]

This suggests that high costs could be due to outsourcing of expert advice. As Rametse and Pope[94] suggest, it is possible that critical respondents who incurred high costs had to spend more time in sorting out their recordkeeping systems as their records were possibly improperly maintained prior to the introduction of the GST. Moreover, the introduction of the Malaysian GST — similar to other countries, for example, Australia — required tax invoices to be used, which were not required under the SST system. Debit notes for GST purposes were also different to those used by businesses under the SST system.

B *Attitudes on Reasons for Employing External Tax Professionals*

Respondents provided similar attitudes on the three areas of reasons they provided for employing external tax professionals. The relationship between attitudes regarding the extent of importance for employing external tax professionals and GST start-up compliance costs was assessed (see Table 4 below). Businesses that found it '*very important*' and '*important*' that hiring external tax professionals was cost effective incurred the highest mean GST start-up compliance costs of MYR54,988 and MYR41,241, respectively, as compared to those who regarded it as '*not important*'. The reason could be that they would rather spend more money hiring external consultants who may be more knowledgeable on GST matters, than dealing with the tax compliance work themselves.

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90 See Hanefah (n 48); Abdul-Jabbar and Pope (n 49); Tran-Nam and Glover (n 17).

91 See tax codes at 'GST Tax Codes (01 June 2018 Onward)' (n 83). The authors could not find an official source for the tax codes. However, the cited source is deemed credible, as it is widely cited in the literature.

92 See Rametse and Yong (n 4).

93 See Loo, McKerchar and Handsford (n 16); Tran-Nam and Glover (n 17); Tran-Nam (n 40); McCaffrey (n 41).

94 Rametse and Pope (n 7).

TABLE 4: MEAN TOTAL GROSS COSTS (INCLUDING TIME) BY ATTITUDES ON REASONS FOR EMPLOYING EXTERNAL TAX PROFESSIONALS

ATTITUDE(S)		MEAN (MYR)	NUMBER OF RESPONDENTS
It is cost effective to hire external tax professionals	Very Important	54,988	12
	Important	41,241	9
	Neutral	59,674	13
	Not Important	27,494	6
	Least Important	18,433	4
	Total	**40,366**	**44**
To reduce the chance of GST audit by RMCD	Very Important	73,308	16
	Important	23,084	5
	Neutral	50,535	11
	Not Important	13,725	3
	Least Important	41,489	9
	Total	**40,428**	**44**
Not getting the required technical help from RMCD	Very Important	48,008	10
	Important	52,907	11
	Neutral	43,109	9
	Not Important	33,638	7
	Least Important	24,167	5
	Total	**40,366**	**42**

External consultants, who were already working in Malaysia, may have previously dealt with GST requirements from other countries that already had an established GST and hence, were knowledgeable about the Malaysian GST requirements. This explains the reason why respondents who found it '*very important*' to reduce the chance of a GST audit being conducted by the RMCD incurred higher costs of MYR73,308. Moreover, businesses that found it '*very important*' and '*important*' to engage external consultants because of '*not getting the required technical help from RMCD*' incurred high costs of MYR48,008 and MYR52,907 respectively, than those who regarded it as '*not important*'. As Rametse and Yong note, complex tax rules make the compliance process exhausting, necessitating the need to seek expert advice, which, consequently, increases compliance costs.[95] It must be noted that tax authorities work in consultation with drafters of the legislation to ensure that taxpayers' compliance costs are reduced by drafting a simple tax legislation as well as providing efficient services to taxpayers' queries.[96] The reasons for incurring high costs by Malaysian enterprises bode well with the qualitative comments that the respondents provided, which suggests that overall the RMCD officers were not knowledgeable enough to provide prompt GST advice.

It must be noted that this study solicited pre-implementation information for the period 1 April 2012 to 30 March 2015. Therefore, although the RMCD had provided training for

95 Rametse and Yong (n 4).

96 Other possible GST simplification measures have been suggested by Makara and Sawyer (n 37).

RMCD officers and businesses, it is possible that, at the time of data collection, the RMCD officers were still in training and not fully familiar with the GST system. Such a gap in knowledge by the RMCD officers could have evoked negative attitudes from taxpayers who did not receive the support they required. Not surprisingly, customs officers and all those who were engaged in the Malaysian GST implementation faced a steep learning curve cost. Other studies have discussed this gap in tax knowledge. For example, research by Santhariah et al, found that only 24 per cent of respondents were confident that they would get the required help and assistance from the RMCD.[97] Indeed, if GST is reintroduced in Malaysia, as suggested by many (for example, the Malaysian Institute of Economic Research (MIER)),[98] a post-implementation study could provide improved and/or some positive attitudes towards the RMCD officers as they become more knowledgeable in handling GST matters.

C *Attitudes Concerning Potential Managerial Benefits*

Four major areas of managerial benefits solicited from the respondents were:

1. Improved accounting information;
2. Better and improved controls to prevent theft and fraud;
3. Savings in accounting costs using internal staff to keep records; and
4. Better accounting information forecasting cash flow and profit.

The highest area of potential managerial benefits for Malaysian SMEs concerned improved accounting information (88 per cent), followed by better accounting information for forecasting cash flow and profit (72 per cent), better and improved controls to prevent theft and fraud (71 per cent), and lastly, savings in accounting costs using internal staff to maintain records (60 per cent).

The relationship between attitudes concerning the derivation of potential managerial benefits and mean total gross costs (including time) was assessed (see Table 5 below). The findings of this study suggest that those businesses that expected to derive managerial benefit from improved accounting information systems, improved controls to prevent theft and fraud, and savings in accounting costs using internal staff to keep records, incurred the highest costs than those businesses that did not expect such benefits.

Overall, businesses that expected to derive managerial benefits from improved accounting information systems available for day-to-day business decisions incurred mean gross start-up compliance costs of MYR50,458. Most of the businesses who '*strongly agreed*' and '*agreed*' to the statement that managerial benefits will result in improved accounting information systems incurred the highest mean gross start-up compliance costs of MYR96,412 and MYR84,335 respectively.

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97 Santhariah et al (n 50).

98 Malaysian Institute of Economic Research ('MIER'), 'MIER Urges Gov't to Reintroduce GST in Budget 2020', *Malaysiakini* (online, 1 October, 2019) <https://www.malaysiakini.com/news/494041>.

This was followed by: those who '*strongly agreed*' and '*agreed*' that managerial benefits will arise from '*better accounting information for forecasting cash flow and profit forecasts*' (MYR74,5235 and MYR77,692 respectively); '*better and improved controls to prevent theft and fraud*' (MYR59,338 and MYR83,154 respectively); and '*savings in accounting costs using internal staff to keep records*' (MYR48,846 and MYR76,492, respectively).

TABLE 5: MEAN TOTAL GROSS COSTS (INCLUDING TIME) BY ATTITUDE ON DERIVING POTENTIAL MANAGERIAL BENEFITS

ATTITUDE(S)		MEAN (MYR)	NUMBER OF RESPONDENTS
Improved accounting information systems available for day-to-day business decisions	Strongly Agree	96,412	32
	Agree	84,335	28
	Neutral	18,013	6
	Strongly Disagree	3,070	1
	Total	**50,457**	**67**
Better and improved controls to prevent theft and fraud	Strongly Agree	59,338	20
	Agree	83,154	28
	Neutral	47,430	16
	Disagree	8,880	3
	Strongly Disagree	0	0
	Total	**50,457**	**67**
Savings in accounting costs using internal staff to keep records	Strongly Agree	48,846	16
	Agree	76,492	25
	Neutral	45,936	15
	Disagree	24,527	8
	Strongly Disagree	6,027	2
	Total	**40,366**	**67**
Better accounting information for forecasting cashflow and profit forecasts	Strongly Agree	74,525	24
	Agree	77,692	25
	Neutral	27,867	9
	Disagree	18,578	6
	Strongly Disagree	3,166	4
	Total	**40,366**	**67**

These findings suggest that, despite deriving potential managerial benefits, these businesses still incurred high start-up compliance costs. This confirms findings of a study by Rametse and Pope that, although managerial benefits exist, they are overshadowed by excessive compliance costs. Moreover, these businesses possibly regard managerial benefits as a GST compliance burden, rather than a benefit as they usually lack time to monitor their finances as closely as they should.[99]

Although Makara and Rametse's study relates to recurrent compliance costs, its findings are useful, as they are not based on expectation of benefits. Their findings suggest that while taxpayers perceive VAT compliance costs to be high, these costs are, to some

[99] Rametse and Pope (n 7).

degree, mitigated by compliance benefits in the form of better management and recordkeeping.[100] This supports Coleman and Evans' notion that taxpayers are utility maximisers who will comply if the benefits of compliance outweigh the costs.[101] Moreover, as findings of the current study confirm, respondents support the Malaysian Government's tax reform relating to the GST. This signifies expectation that businesses would comply with the Malaysian GST as a result of the managerial benefits they expect.

VI CONCLUSION

The findings of this study suggest that overall, in a Malaysian context, businesses that do mind doing GST work, that believed GST is unreasonably complicated and that support the Malaysian Government's tax reforms relating to GST, incurred higher average GST start-up compliance costs. Furthermore, this research suggests that SMEs provided similar attitudes regarding the employment of external advisors for the following three main reasons: 1) it is cost effective to hire external tax professionals; 2) to reduce the chance of a GST audit being conducted by the RMCD; and 3) because they did not receive the required technical help from the RMCD. However, the relationship between attitudes and start-up compliance costs indicated that start-up costs were higher for those businesses that found it very important that hiring external tax professionals was cost effective as compared to those who regarded it as not important. Most businesses expected to derive managerial benefits from: 1) improved accounting information; 2) better and improved controls to prevent theft and fraud; 3) savings in accounting costs using internal staff to maintain records; and 4) better accounting information for forecasting cash flow and profit. When attitudes to all the areas of potential managerial benefits were analysed by start-up costs, these businesses also incurred the highest start-up costs in all the areas, compared to those who did not expect to derive managerial benefits.

This study contributed to studies on perceptions/attitudes of SMEs with respect to the tax compliance process and the costs that are incurred when a new tax is introduced, particularly consumption taxes such as the GST. For SMEs to present positive attitudes towards their tax obligations, tax authorities (for example, the RMCD) have a duty to educate/re-educate the business taxpayers on their compliance obligations. Tax simplification strategies, such as simplifying the tax legislation are vital, and go a long way in motivating SMEs to comply with the tax obligations. Government must also publish Tax Impact Statements ('TIS'), which the Malaysian Government failed to do, to inform SMEs about the costs they are most likely to incur as a result of introducing a new tax. The TIP must also include potential benefits of compliance, which expectedly, will encourage SMEs to comply and hence, lower compliance costs as well as the stress resulting from the GST compliance requirements.

Relevantly, this study's limitation is its small sample size; hence, the findings of this study must be treated with caution, as they cannot be generalised to the Malaysia SMEs'

[100] Makara and Rametse, 'Cash Flow and Managerial Benefits of VAT in Botswana' (n 8).

[101] Coleman and Evans (n 22).

population. Future research related to start-up costs of any consumption tax need to have a large sample size, which can aid to estimate potential managerial benefits.

REFERENCES

A *Articles/Books/Reports*

Abdul-Jabbar, Hijattulah and Jeff Pope, 'Tax Attitudes and Compliance Among Small and Medium Enterprises in Malaysia' (2009) 15(3) *New Zealand Journal of Taxation Law and Policy* 198

Adams, Caroline and Paul Webley, 'Small Business Owners' Attitudes on VAT Compliance in the UK' (2001) 22(2) *Journal of Economic Psychology* 195

Ajzen, Icek, 'The Theory of Planned Behavior' (1991) 50(2) *Organizational Behavior and Human Decision Processes* 179

Alm, James, Betty Jackson and Michael McKee, 'Estimating the Determinants of Taxpayer Compliance with Experimental Data' (1992) 45 *National Tax Journal* 107

Aziz, Saliza Abdul, Bidin Zainol Bidin and Munusamy Marimuthu, 'The Effect of Attitude and Understanding towards GST Satisfaction among Business Communities in Malaysia' (2017) 23(4) *Advanced Science Letters* 3120

Bidin, Zainol, Faridahwati Mohd-Shamsudin and Zainudin Othman, 'Using Theory of Reasoned Action to Explain Taxpayer Intention to Comply with Goods and Services Tax' (2014) 5(1) *International Journal of Business and Social Science* 131

Bird, Richard and Pierre-Pascal Gendron, *The VAT in Developing and Transitional Countries* (Cambridge University Press, 2007)

Cnossen, Sijbren, 'Design of the Value Added Tax: Lessons from Experience' in Javad Khalilzadeh-Shirazi and Anwar Shah (eds), *Tax Policy in Developing Countries* (World Bank, 1991)

Collins, Julie, Valerie Milliron and Daniel Toy, 'Determinants of Tax Compliance: A Contingency Approach' (1992) 14(1) *The Journal of the American Taxation Association* 1

Coleman, Cynthia and Chris Evans, 'Tax Compliance Issues for Small Business in Australia' in Neil Warren (ed), *Taxing Small Business: Developing Good Tax Policies* (Australian Tax Research Foundation, 2003)

Ebrill, Liam, Michael Keen, Jean-Paul Bodin and Victoria Summers, *The Modern VAT* (International Monetary Fund, 2001)

Evans, Chris, 'Taxing Personal Gains in Australia: Causes of Complexity and Proposals for Reform' (2004) 19(3) *Australian Tax Forum* 371

International Bureau of Fiscal Documentation, 'Malaysia Declares "Abolishment" of Goods and Services Tax from 1 June 2018' (Article, 17 May 2018) <https://www.ibfd.org/IBFD-Tax-Portal/News/Malaysia-declares-abolishment-Goods-and-Services-Tax-1-June-2018>

Jackson, Betty and Valerie Milliron, 'Tax Compliance Research: Findings, Problems and Prospects' (1986) 5 *Journal of Accounting Literature* 125

James, Kathryn, *The Rise of the Value-Added Tax* (Cambridge University Press, 2015)

James, Simon, Adrian Sawyer and Ian Wallschutzky, 'The Complexities of Tax Simplification: Progress in Australia, New Zealand and the United Kingdom' (1998) 14(1) *Australian Tax Forum* 29

James, Simon, Adrian Sawyer and Ian Wallschutzky, 'Tax Simplification: A Review of Initiatives in Australia, New Zealand and the United Kingdom' (2015) 13(1) *eJournal of Tax Research* 280

Keen, Michael and Jack Mintz, 'The Optimal Threshold for a Value Added Tax' (2004) 88(3–4) *Journal of Public Economics* 559

Krever, Rick, *VAT in Africa* (Pretoria University Law Press, 2008)

Kumar, R, *Research Methodology: A Step-by-Step Guide for Beginner's* (Addison Wesley Longman, 1996)

Lejeune, Ine, 'The EU VAT Experience: What are the Lessons?', Tax Analysts (Article, 2011) <http://www.taxhistory.org/www/freefiles.nsf/Files/LEJEUNE-21.pdf/%24file/LEJEUNE-21.pdf>

Loo, Ern Chen, Margaret McKerchar and Ann Hansford, 'Findings on the Impact of Self-Assessment on the Compliance Behaviour of Individual Taxpayers in Malaysia: A Case Study Approach' (2010) 13(1) *Journal of Australian Taxation* 1

Makara, Tshepiso and Adrian Sawyer, 'Towards Simplification of Value Added Tax Compliance for Small Businesses in Botswana – Lessons from New Zealand' (2019) 14(1) *Journal of the Australasian Tax Teachers Association* 77

Makara, Tshepiso and Nthati Rametse, 'Estimates of the Cash Flow and Managerial Benefits of Value Added Tax in Botswana' (2017) 23(4) *New Zealand Journal of Taxation Law and Policy* 422

Makara, Tshepiso and Nthati Rametse, 'Taxpayer Attitudes, Compliance Benefits Perceptions and Compliance Costs of the Value Added Tax System in Botswana' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 246

McCaffrey, Edward, 'The Holy Grail of Tax Simplification' (1990) 1990(5) *Wisconsin Law Review* 1267

Mun Ching, Yong, Jeyapalan Kasipillai and Ashutosh Sarker, 'GST Compliance and Challenges for SMEs in Malaysia' (2017) 15(3) *eJournal of Tax Research* 457

Pope, Jeff, 'The Compliance Costs of Taxation in Australia and Tax Simplification: The Issues' (1993) 18(1) *Australian Journal of Management* 69

Rametse, Nthati, 'Measuring the Costs of Implementing the Former Carbon Tax for Australian Liable Entities' (2015) 21(2) *New Zealand Journal of Taxation and Policy* 190

Rametse, Nthati, 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' (2020) 26(2) *New Zealand Journal of Taxation and Policy* 153

Rametse, Nthati and Jeff Pope, 'Start-Up Compliance Costs of the GST: Empirical Evidence from Western Australian Small Businesses' (2002) 17(4) *Australian Tax Forum* 407

Rametse, Nthati and Sue Yong, 'Small Business Taxpayers' Attitudes to Complying with a Tax System: Lessons and Experiences from Australia and New Zealand' (2009) 1(1) *Journal of Applied Law and Policy* 83

Richardson, Maryann and Adrian Sawyer, 'A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects' (2001) 16(2) *Australian Tax Forum* 137

Salman Saleh, Ali and Nelson Oly Ndubisi, 'An Evaluation of SME Development in Malaysia' (2006) 2(1) *International Review of Business Research Papers* 1

Sandford, Cedric et al, *Costs and Benefits of VAT* (Heinemann Educational Books, 1981)

Sandford, Cedric, Michael Godwin and Peter Hardwick, *Administrative and Compliance Costs of Taxation* (Institute for Fiscal Studies, 1989)

Santhariah, Appadu et al, 'The Implementation of the Goods and Services Tax in Malaysia: Potential Issues Perceived by Business Taxpayers' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 351

Sharoja Sapiei, Noor, Jeyapalan Kasipillai and Uchenna Cyril Eze, 'Determinants of Tax Compliance Behaviour of Corporate Taxpayers in Malaysia' (2014) 12(2) *eJournal of Tax Research* 383

Tait, Alan, *Value Added Tax: International Practice and Problems* (International Monetary Fund, 1988)

Tran-Nam, Binh, Chris Evans, Richard Krever and Philip Lignier, 'Managing Tax Complexity: The State of Play after Henry' (2016) 35(4) *Economic Papers* 347

Tran-Nam, Binh and John Glover, 'Tax Reform in Australia: Impacts of Tax Compliance Costs on Small Business' (2002) 5(3) *Journal of Australian Taxation* 338

United States Government Accountability Office, *Value Added Tax. Lessons Learned from Other Countries on Compliance Risks, Administrative Costs, Compliance Burden and Transition: Report to Congressional Requesters* (Report, United States Government Accountability Office, 2008)

Wallschutzky, Ian and Brian Gibson, 'Small Business Cost of Tax Compliance' (1993) 10(4) *Australian Tax Forum* 511

Woodward, Lynley and Lin Mei Tan, 'Small Business Owners' Attitudes Toward GST Compliance: A Preliminary Study' (2015) 30(3) *Australian Tax Forum* 517

Zu, Yige, 'VAT/GST Thresholds and Small Businesses: Where to Draw the Line?' (2018) 66(2) *Canadian Tax Journal* 309

B *Other*

Casanegra de Jantscher, Milka, 'Problems of Administering a Value Added Tax in Developing Countries' (Working Paper No 86/15, International Monetary Fund, 1 December 1986)

Coleman, Cynthia and Lynn Freeman, 'Changing Attitudes of Small Business Owners to the ATO in a Tax Reform Environment' (Conference Paper, Australasian Tax Teachers Association Conference, 5–7 February 1999)

'GST Tax Codes (01 June 2018 Onward)' <https://www.biztrak.com/downloads/18052018/GST-Tax-Codes-(01-June-2018-onward).pdf>

Hanefah, Mustafa, 'An Evaluation of the Malaysian Tax Administrative System and Taxpayers Perceptions Towards Assessment Systems, Tax Law Fairness and Tax Law Complexity' (PhD Thesis, University Utara Malaysia, 1996)

Husni, H, '350,054 Companies GST-Ready as of March 11', *New Straits Times* (online, 11 March 2015)

International Tax Dialogue, 'The Value Added Tax: Experiences and Issues', *International Tax Dialogue* (Website, 2005) <www.itdweb.org>

Malaysian Institute of Economic Research ('MIER'), 'MIER Urges Gov't to Reintroduce GST in Budget 2020', *Malaysiakini* (online, 1 October, 2019) <https://www.malaysiakini.com/news/494041>

Mohd Isa, Khadijah, 'Corporate Taxpayers' Compliance Variables under Self-Assessment System in Malaysia: A Mixed Methods Approach' (PhD Thesis, Curtin University, 2012)

Organisation for Economic Co-operation and Development, 'Economic Surveys: Malaysia, (Economic Assessment, November 2016) <https://www.oecd.org/eco/surveys/Malaysia-2016-OECD-economic-survey-overview.pdf>

Ramayah, T, N Ismail and KP Ling, 'An Exploratory Study of Internet Banking in Malaysia' (Conference Paper, International Conference on Management of Innovation and Technology, October 2002)

Rametse, Nthati, 'Start-Up Compliance Costs of the Goods and Services Tax (GST) for Small Businesses in Australia' (PhD Thesis, Curtin University, 2006)

Shome, Parthasarathi, 'Tax Administration and the Small Taxpayer' (Policy Discussion Paper No 04/2, International Monetary Fund, 2004)

SME Corporation, 'SME Definitions' (Web Page, 2020) <https://www.smecorp.gov.my/index.php/en/policies/2020-02-11-08-01-24/sme-definition>

Tran-Nam, Binh, 'Tax Simplification and the Operating Costs of the Australian Federal Tax System' (Conference Paper, Australasian Tax Teachers Association Conference, 5–7 February 1999)

Yesegat, Wollela Abehodie, 'Value Added Tax in Ethiopia: A Study of Operating Costs and Compliance' (PhD Thesis, University of New South Wales, 2009)

EQUITY CROWDFUNDING IN NEW ZEALAND: THE ROLE OF INCOME TAX INCENTIVES

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ABSTRACT

Equity crowdfunding facilitates companies' access to capital, particularly for start-ups. In New Zealand, light-handed regulation and a syndication model have contributed to the growth of equity crowdfunding. This article analyses the effects of income tax legislation on crowdfunding in New Zealand and considers how — and whether — amendments to income tax legislation could further promote this form of private investment. This paper argues that dissonance exists between financial markets policy on crowdfunding and tax policy on research and development. In the context of dire predictions for Covid-19-related job losses, the potential for crowdfunding to promote start-ups, and to create jobs, deserves tax policymakers' attention.

Keywords: equity crowdfunding, R&D, return on investment, tax incentives

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I INTRODUCTION

'Crowdfunding' is a means 'of funding a project or venture by raising money from a large number of people, each of whom contributes a relatively small amount, typically via the internet'.[1] Crowdfunding arose from the confluence of internet-based technology, including the rise of social media, and the need for small businesses to raise capital in the wake of the Global Financial Crisis ('GFC'). Bradford identifies five models for crowdfunding: the donation model; the reward model; the pre-purchase model; the lending model; and the equity model.[2] Relevantly, this article is concerned with raising equity capital through crowdfunding.

Securities laws commonly allow wealthy investors, who are presumed to be capable of assessing the risks of a venture, to buy shares in a company without the usual stringent consumer protections applying. Exemptions typically require a minimum investment amount or certification that the investor is wealthy or experienced.[3]

In the United States, in the wake of the GFC, start-ups experienced a pressing need for new sources of capital, since banks were generally unwilling to lend — even to well-established companies.[4] Furthermore, the market shunned initial public offerings.[5] Crowdfunding proponents argued that, if new ventures had better access to capital funding, they would be able to create jobs. Indeed, research showed that in the United States, new firms (as a class) added an average of three million jobs in their first year, while older companies lost one million jobs annually.[6] Lawmakers, therefore, envisaged crowdfunding as a means of revitalising the American economy, principally through job creation. However, if capital for start-ups was to be crowdfunded, securities laws needed to be relaxed. The *Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012* ('*CROWDFUND Act*'), which forms part of title III of the omnibus *Jumpstart Our Business Startups Act of 2012*, Pub L No 112-106 ('*JOBS Act*') attracted rare bipartisan support and was enacted on 5 April 2012. The *CROWDFUND Act* opened up the market for crowdfunding intermediaries as registered funding portals to facilitate equity

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1 The *Oxford English Dictionary* (online ed).

2 C Steven Bradford, 'Crowdfunding and the Federal Securities Laws' (2012) *Columbia Business Law Review* 1, 14–15.

3 See, eg, the concept of an 'accredited investor' in the United States (*Securities Act* 15 USC § 77a; s 2(a)(15) of the *Securities Act of 1993*); a 'sophisticated investor' in Australia (*Corporations Act 2001* (Cth) s 708); and 'high net wealth investors' and 'sophisticated investors' in the United Kingdom's (Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (UK) arts 50, 50A).

4 'Many Scrappy Returns', *The Economist* (United Kingdom, 19 November 2011) 36.

5 See John C Coffee, 'Statement of Professor John C Coffee, Jr, Adolf A Berle Professor of Law Columbia University Law School at Hearings Before the Senate Committee on Banking, Housing and Urban Affairs, 'Spurring Job Growth Through Capital Formation While Protecting Investors', United States Senate (Washington DC, 1 December 2011) 1–3.

6 See Tim Kane, 'The Importance of Startups in Job Creation and Job Destruction' (Foundation Research Series, Kauffman, July 2010) 2.

offers by start-ups.[7] A non-accredited investor could invest up to the lesser of 10 per cent of their annual income or USD10,000 in start-up equity. Companies seeking crowdfunding investment had to register with the Securities and Exchange Commission and restrict this method of financing to USD1 million per year or USD2 million, if they issued audited financial statements.[8]

In the United Kingdom, a private company must not offer shares to the public[9] and an offer of shares by a public company must normally be accompanied by a detailed prospectus,[10] which is expensive to prepare. However, successive governments have promoted angel investment by wealthy investors,[11] particularly through generous tax concessions.[12] Equity crowdfunding is permitted if: the total amount sought from investors is less than EUR5 million (in a 12-month period); the offer is made to qualified investors only or fewer than other 150 persons; or the minimum investment is EUR100,000 per person.[13]

Job creation was not a stated policy purpose for permitting equity crowdfunding in New Zealand; rather the goal was to extend the narrow scope of exemptions under the extant *Securities Act 1978* (NZ), in order to provide small firms with better access to capital.[14] However, in a post Covid-19 context, when as many as 120,000 job losses are predicted for New Zealand,[15] the role of crowdfunding in promoting start-ups and potentially creating jobs deserves more policy attention.

Despite starting later than the United Kingdom and the United States, according to Schwartz,[16] New Zealand has become a global leader in equity crowdfunding since the

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7 JJ Colao, 'Breaking Down the JOBS Act: Inside the Bill that Would Transform American Business', *Forbes* (online, 21 March 2012).

8 'Spotlight on Jumpstart Our Business Startups (JOBS) Act', *Securities Exchange Commission* <https://www.sec.gov/spotlight/jobs-act.shtml>.

9 *Companies Act 2006* (UK) s 755.

10 *Financial Services and Markets Act 2000* (UK) s 85.

11 An angel investor is 'a person who provides capital, in the form of debt or equity, from his own funds to a private business owned and operated by someone else, who is neither a friend nor a family member'. See Scott A Shane, *Fool's Gold?: The Truth Behind Angel Investing in America* (Oxford University Press, New York, 2008) 14.

12 See Part IV C of this paper for a discussion of the United Kingdom tax incentives for angel investors.

13 'Policy Statement PS14/4: The FCA's Regulatory Approach to Crowdfunding Over the Internet, and the Promotion of Non-Readily Realisable Securities by Other Media, Feedback to CP13/13 and Final Rules' *Financial Conduct Authority* (Report, March 2014) <https://fca.org.uk/publication/policy/ps14-04.pdf>.

14 Ministry of Economic Development, 'Review of Securities Law Discussion Paper' (Report, June 2010) 47–49 <https://www.mbie.govt.nz/assets/f56be9b821/review-of-secuities-law-dicsussion-document.pdf>.

15 See, eg, Patrick Gower, 'Coronavirus: Up to 120,000 Kiwis Predicted to Lose Jobs – Economist' *Newshub* (Web Page, 7 June 2020) <https://www.newshub.co.nz/home/money/2020/06/coronavirus-up-to-120-000-kiwis-predicted-to-lose-jobs-economist.html>.

16 Andrew A Schwartz, 'Equity Crowdfunding in New Zealand' (2018) *New Zealand Law Review* 243, 252–254.

Financial Markets Conduct Act 2013 (NZ) first permitted this form of investment in 2014.[17] However, growth in the sector is not consistent. In 2018, the total capital raised through equity crowdfunding platforms increased to NZD16.7 million (from NZD11.97 million in 2017),[18] however in 2019, investment fell to NZD13.7 million.[19]

Through equity crowdfunding, a fundraiser elicits non-debt financing and so entrepreneurial risk is shared between the business founders and outside investors. Investors' risk can be very high, given that a fundraiser is usually a start-up or in a loss-making situation.[20] Undertaking risk generally drives a capitalist economy,[21] in which — to a great extent — profits constitute compensation for investors assuming entrepreneurial risk. Investors' risk includes both income and capital risks. Income risk refers to uncertainty regarding future net revenues, whereas, capital risk arises from the uncertain future value of capital goods which, in turn, results from an uncertain depreciation rate or future replacement cost of the capital.[22]

Incentivising equity crowdfunding through taxation has been considered in the tax literature,[23] however, the impact of tax on the fundamental policy goals underpinning the equity crowdfunding exception to usual securities rules, remains largely unexamined. This article aims to fill this gap and discusses various tax incentives from the perspective of their financial markets policy effects.

Income tax can be expected to deter risk undertaking because it reduces the amount of after-tax income in a shareholder's hands. Empirical evidence, however, does not support this presumption. Stiglitz has found that, if the national tax system shares sufficiently in income risk (through full or partial loss offset) and in expected capital risk (by ex post

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17 *Financial Markets Conduct Act 2013* (NZ) ('*Financial Markets Conduct Act*'). Some provisions of this Act came into force on 1 April 2014, others on 1 December 2014. For details see Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51); Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325).

18 'Statistical Report on Peer-to-Peer Lending and Crowdfunding in New Zealand', *Financial Markets Authority* (Report, 23 November 2018) <https://public.tableau.com/profile/fmaadmin#!/vizhome/Reg_returns_final_version_0/Story1> ('FMA Statistical Report').

19 'Peer-to-Peer and Crowdfunding: Sector Snapshot', *Financial Markets Authority* (Report, 5 December 2019) <https://www.fma.govt.nz/news-and-resources/reports-and-papers/peer-to-peer-and-crowdfunding-sector-snapshot> ('FMA Sector Snapshot').

20 For a discussion of the risks associated with crowdfunding, see Francesca Tenca and Chiara Franzoni, 'Crowdfunding: Risk, Fraud and Regulation' in Hans Landström, Annaleena Parhankangas and Colin Mason (eds), *Handbook on Research on Crowdfunding* (Edward Elgar, 2019) 323–337.

21 Joseph E Stiglitz, *Economics of the Public Sector* (W W Norton & Company, 3rd ed, 2000) 588.

22 Russell Krelove, 'Taxation and Risk Taking' in Parthasarathi Shome (ed), *Tax Policy Handbook* (International Monetary Fund, 1995) 55, 58.

23 See, eg, Paul Battista, 'The Taxation of Crowdfunding: Income Tax Uncertainties and a Safe Harbor Test to Claim Gift Tax Exclusion' (2015) 64(1) *University of Kansas Law Review* 143; Stephen Graw, 'Crowd-Sourced Funding – Was Tax Considered?' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 85.

depreciation, or by not taxing capital gains or taxing them upon realisation), risk undertaking increases.[24]

An understanding of the role that income tax may play in the growth of equity crowdfunding requires a holistic analysis of the interplay between crowdfunding regulations and tax legislation, including the effects of specific tax incentives on equity crowdfunding. This article, which has a jurisdictional focus on New Zealand albeit broader relevance,[25] engages in this analysis.

Relevantly, this article is structured to provide a further explanation of equity crowdfunding in New Zealand (Part II) and its tax implications (Part III), prior to discussing the desirability of tax incentives for equity crowdfunding and drawing conclusions in Part V.

II EQUITY CROWDFUNDING IN NEW ZEALAND

Equity crowdfunding requires three types of participants: a fundraiser, an intermediary and investors. The aim of the intermediary is to match the capital demands of a fundraiser with the supply of funds from investors.

Different motives drive crowdfunding participants. The lack of alternative financial instruments, minimum formalities and lower costs of investment,[26] and an opportunity to market one's own products, are the typical reasons for crowdfunding's appeal to fundraisers.[27] Meanwhile, willingness to help, to enjoy a small risk undertaking, to learn from leading investors or share an investment risk with the crowd, along with an expectation of a material return from a contribution, tend to motivate investors. An intermediary focuses on making profits by matching fundraisers' demands to the supply of funds from investors.

The effectiveness of equity crowdfunding depends on the ability of an intermediary to first, control the high risks associated with investing in early-stage start-ups, and

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24 Stiglitz (n 21) 589–590.

25 For a critical discussion of equity crowdfunding in Australia, see Akshaya Kamalnath and Nuannuan Lin, 'Crowd-Sourced Equity Funding in Australia – A Critical Appraisal' (2019) 47(2) *Federal Law Review* 288. For an analysis of the taxation of crowdfunding in Australia, see Fiona Martin and Ann O'Connell, 'Crowdfunding: What Are the Tax Issues' (2018) 20 *Journal of Australian Taxation* 16. See also Graw (n 23).

26 Ajay Agrawal, Christian Catalini and Avi Goldfarb, 'Some Simple Economics of Crowdfunding' (2014) 14(1) *Innovation Policy and the Economy* 63.

27 Qualitative research into German start-ups found the following reasons for their pursuing equity crowdfunding: fundraising, marketing, the speed of the funding process, the favourable company evaluation, the minor impact on the shareholder situation (if voting rights are not transferred), and the opportunity to find more investors after the campaign. See Martin Angerer et al, 'Start-Up Funding via Equity Crowd-Funding in Germany – A Qualitative Analysis of Success Factors' (2017) 17(1) *Journal of Entrepreneurial Finance* 1, 5–9.

therefore, to earn trust among investors, and second, to match appropriate fundraisers and investors.[28]

Equity crowdfunding in New Zealand is 'target-based', which means if the project's fundraising objective is not met, the project is regarded as unsuccessful and all money should be returned to investors. In 2019, the number of equity crowdfunding projects that met their minimum funding target fell to 19 (from 28 in 2018 and 34 in 2017).[29]

In 2019, 84.4 per cent of investments made through equity crowdfunding platforms in New Zealand were below NZD5,000 (88.5 per cent in 2018).[30] There could be many reasons for investors' unwillingness to undertake substantial financial risks. First, investments in loss-making companies are highly risky. Second, because equity crowdfunding is a relatively new form of investment vehicle, there is negligible empirical data on average return on investment. Third, the absence of a secondary market for crowdfunded shares limits investors' exit opportunities. Finally, fundraisers commonly offer non-voting shares, in part, to avoid the voting control implications of the takeovers regulations,[31] with the result that the investor may not enjoy the rights associated with ordinary shares, including the right to vote on the appointment and removal of directors.[32]

Offers of securities in New Zealand are subject to the disclosure requirements of the *Financial Markets Conduct Act 2013* (NZ), subject to certain exclusions. Generally, a fundraising company and its directors must comply with extensive and often expensive disclosure requirements. However, the crowdfunding exclusion shifts this compliance responsibility to an intermediary that provides a crowdfunding service (i.e. a crowdfunding platform).[33] Therefore, this intermediary acts as a gate-keeper — a quasi-stock exchange with some delegated regulatory functions. The crowdfunding exclusion applies when relatively small amounts of money are exchanged for shares in a fundraiser through a crowdfunding platform.[34]

Crowdfunding platforms operating in New Zealand must be licensed by the Financial Markets Authority ('FMA')[35] and must meet certain other requirements.[36] For the year ending 30 June 2019, seven New Zealand crowdfunding platforms held licences issued by

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28 Victoriya Salomon, 'Evolving Crowdfunding Models' in Landström, Parhankangas and Mason (eds) (n 20) 358.

29 FMA Statistical Report (n 18); FMA Sector Snapshot (n 19).

30 'Crowdfunding Sector Summary' in FMA Sector Snapshot (n 19).

31 A 'code company' includes a company that has 50 or more shareholders. See Takeovers Regulations 2000 (SR 2000/210) reg 3(1).

32 See *Companies Act 1993* (NZ) s 36.

33 *Financial Markets Conduct Act* (n 17) s 6, sch 1 cl 6. See also Schwartz (n 16) 249.

34 Financial Markets Conduct Regulations 2014 (NZ) regs 185(1)(a), (4) ('Financial Markets Conduct Regulations').

35 Ibid regs 186(1)(d), 390.

36 For details see *Financial Markets Conduct Act* (n 17) ss 186, 197, 202.

the FMA, down from 8 in 2018.[37] Most of these platforms have operated since 2014 when equity crowdfunding was first permitted. Regulations do not impose a cap on individual investment but prescribe a fundraising threshold — up to NZD2 million through licensed crowdfunding platforms in any 12-month period. This threshold applies in aggregation with any fundraising under the small offers exclusion or any peer-to-peer lending.[38] New Zealand crowdfunding regulations are light-handed in that they: have no residency restrictions for fundraisers or investors; place fundraisers outside the disclosure regime; and have no direct investors' cap.[39]

According to Schwartz, equity crowdfunding in New Zealand has the following particular features: 'syndication', which means 'the crowd invests alongside a large and sophisticated '"lead" investor';[40] preferences to invest in local businesses;[41] and the importance of reputation for both fundraising companies and crowdfunding platforms.[42] Keeper describes the New Zealand equity crowdfunding regime as 'one of the most progressive and innovative operating in the world today'.[43]

III EQUITY CROWDFUNDING: INCOME TAX IMPLICATIONS

This part of the article outlines the income tax implications for participants of equity crowdfunding in New Zealand.

A *Fundraisers*

The three main income tax events for fundraisers include the receipt of contributions, incurring of expenses and payment of dividends.

Income tax assessability of contributions depends on the nature of the funds in the hands of the recipient. In particular, money raised through equity crowdfunding does not constitute income, rather it is capital in the hands of the fundraiser. (A share issue is an exempt supply for goods and services tax ('GST') purposes.[44])

A crowdfunding initiative can be a mix of equity and reward crowdfunding. If a fundraiser not only issues shares but also provides rewards (for example sells products the business

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37 FMA Sector Snapshot (n 19).

38 *Financial Markets Conduct Act* (n 17) s 6, sch 1 cl 6, 12–14.

39 An investor can invest in multiple fundraisers but may not, of course, invest more than NZD2 million in one particular fundraiser.

40 Schwartz (n 16) 245, 262–265.

41 Ibid.

42 Ibid 246, 270–272.

43 Trish Keeper, 'Equity Crowdfunding in New Zealand: A Progressive Experiment' (Working Paper No 103, Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington, September 2016) 2.

44 *Goods and Services Tax Act 1985* (NZ) ss 14(1)(a), 3(1)(d) ('*Goods and Services Tax Act*').

usually produces in advance), money received for the rewards may be regarded as the fundraiser's income[45] from a business or profit-making scheme.[46]

The use of share capital for non-capital business purposes gives rise to deductions, if the general permission rule[47] — which requires a link with the profits or a business — is satisfied, and no limitations apply.[48] For example, money spent on advertising, establishing a crowdfunding project and relevant legal expenses are generally deductible. The capital limitation rule, which denies the deductibility of expenses of a capital nature[49] should not apply in such a case because expenses are incurred to raise funds and, therefore, improve the business's cash flow and operation. Therefore, these expenses should be regarded as revenue-related, rather than as capital expenses.[50] (If a fundraiser is GST registered, it can claim certain inputs, for example, GST paid to a crowdfunding platform.[51])

Fundraisers incur various direct costs, including intermediary's fees and advertising expenses (and they also bear the opportunity costs experienced in fundraising). Generally, a fundraiser can deduct business-related expenses in the year they are incurred;[52] unexpired expenses are deemed income of the fundraiser[53] but can be deducted in the following income year,[54] unless certain exemptions apply.[55] If the deduction of expenses, including those related to raising equity through a crowdfunding platform, results in a net loss for the income year, the fundraiser may carry this loss forward and offset it against future profits.[56] Sometimes losses can be offset against net income of a company related to a fundraising company through loss grouping,[57] although small and medium size companies are typically stand alone.

A fundraiser which seeks funds from the crowd is usually in a loss-making situation. Without income from other sources, such a fundraiser could only carry forward its tax

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45 *Income Tax Act 2007* (NZ) s CB 1 ('*Income Tax Act*').

46 Ibid s CB 3.

47 A taxpayer may deduct an amount if the expenditure or loss is incurred in either deriving assessable income or in the course of carrying on a business. See *Income Tax Act* (n 45) s DA 1(1).

48 *Income Tax Act* (n 45) s DA 2.

49 Ibid s DA 2(1).

50 See special rule for legal expenses under *Income Tax Act* (n 45) s DB 62.

51 *Goods and Services Tax Act* (n 44) s 20.

52 *Income Tax Act* (n 45) s EA 3.

53 Ibid s EA 3(5).

54 Ibid s EA 3(3).

55 See 'Determination E12: Persons Excused from Complying with Section EA 3 of the Income Tax Act 2007', *Inland Revenue Department* (Report, 4 March 2009) <https://www.classic.ird.govt.nz/technical-tax/determinations/accrual/determinations-persons-excused-from-complying.html>.

56 *Income Tax Act* (n 45) s IA 2(2).

57 Ibid s IA 2(3).

loss but 'the lost time value would impose a significant discount'.[58] To utilise its tax losses, the fundraiser would need to bring in an outside investor with sufficient tax liability from other sources.[59] However, that outcome may not be possible, or may result in the extinction of transferable losses. Continuity[60] and commonality[61] of shareholding rules and certain anti-avoidance provisions[62] restrict loss offset and transferability of losses to new investors. Moreover, New Zealand crowdfunding regulations do not allow flow-through entities such as partnerships and limited partnerships to crowdfund.[63] This regulatory limitation blocks direct access to a fundraiser's losses. A company, unless it is a look-through company, cannot pass its losses through to its shareholders. Notwithstanding, a look-through company, risks losing its flow-through tax status if the equity finance it receives through a crowdfunding platform (or otherwise) results in the breach of the five or fewer look-through counted-owners' limitation.[64]

A fundraiser distributes income and gains to its shareholders through dividends. These distributions, if made by a company resident in New Zealand, are subject to imputation rules,[65] and may also trigger resident withholding tax ('RWT') if investors are local tax residents.[66] If investors are foreign tax residents, non-resident withholding tax ('NRWT'),[67] and sometimes, foreign investor tax credits ('FITC')[68] may apply. Consequently, a fundraiser should withhold either RWT or NRWT from dividends it pays but also may qualify for FITC, if a supplementary dividend is paid to foreign investors.

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58 Felix Mormann, 'Beyond Tax Credits: Smarter Tax Policy for a Cleaner, More Democratic Energy Future' (2014) 31(2) *Yale Journal on Regulation* 303, 309. The mathematical formula for calculating the present value of an individual cash flow is PV = F / [(1 + i)*n]; where, PV is 'Present Value', F is 'Future payment' (cash flow), i is interest rate, n is the number of periods in the future. For instance, for an effective annual interest rate of 10 per cent (i), receiving $100 (F) in five years (n) the present value (PV) is $62.90.

59 Ibid.

60 In terms of *Income Tax Act* (n 45) ss IA 5 (2), (3), a group of persons should hold for the continuity period minimum voting or market interests in the company that add up to at least 49 per cent.

61 In a group of companies, none of which is a multi-rate portfolio investment entity ('PIE') or a listed PIE, the same group of persons should hold common voting or market interests that add up to at least 66 per cent. See *Income Tax Act* (n 45) s IC 1(1).

62 For instance, see *Income Tax Act* (n 45) ss GB 3 ('arrangements for carrying forward loss balances: companies'), GB 4 ('arrangements for grouping tax losses: companies').

63 Financial Markets Conduct Regulations (n 34) regs 185(1)(a), (4).

64 *Income Tax Act* (n 45) ss HB 1, YA 1 (definition of 'look-through company').

65 Ibid sub-pt OB.

66 Ibid sub-pt RE.

67 Ibid sub-pt RF.

68 Ibid ss LP 2–LP 6.

B *Investors*

The tax implications of equity crowdfunding for investors depends on the type of investor and their tax residency status. Two events are relevant: making an investment and receiving a dividend.

If a crowdfunding project meets its target, an equity investor becomes a shareholder of the fundraiser. Shares received in a fundraiser constitute capital in the hands of an investor. The absence of a secondary market for shares obtained through crowdfunding makes it implausible to regard these shares as revenue account property. Under the capital limitation rule,[69] contributions made by the investor in the course of equity crowdfunding are a non-deductible expense to this investor. However, because the shareholding can potentially generate dividend income for the investor, this investor may claim a deduction for interest paid on money borrowed for equity investment made through a crowdfunding platform.[70]

Distributions from a company to its shareholders constitute dividends, unless an exclusion applies.[71] Dividends are assessable income in the hands of a shareholder.[72] Amounts of the RWT/NRWT and imputation credits attached to dividends must be added to the net dividend to calculate the shareholder's tax liability.[73] After this liability is calculated, RWT/NRWT credits and imputation credits (if a shareholder is a New Zealand resident) can be credited against this liability.[74] Non-resident shareholders cannot use imputation credits attached to satisfy their income tax liability[75] but, in some circumstances, can receive supplementary dividends equal to their imputation credits.[76] Distributions from a company to its shareholders invariably constitute dividends. Therefore, distributed capital gains are usually taxable in a shareholder's hands, unless distributed on liquidation.[77]

As shares in a fundraiser constitute capital in the hands of an investor, their subsequent distribution does not have income tax consequences, unless they are in the business of dealing in shares.[78] Any gain on disposal is not normally taxable, and any loss is not a deductible expense.[79]

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69 Ibid s DA 2(1).

70 Ibid s DB 6(1).

71 Ibid s CD 4.

72 Ibid s CD 1.

73 Ibid s CD 15(1).

74 Ibid s LA 2.

75 Ibid s RB 3(4).

76 Ibid sub-pt LP.

77 Ibid s CD 26.

78 Ibid ss CB 3, CB 4, CB 5.

79 Ibid ss DA 1, DA 2(1).

C *Intermediaries*

Fees received from fundraisers are included in the business income of an intermediary and are taxed accordingly.[80] Expenses related to the operation of the crowdfunding platform, including licence fees paid to the FMA are deductible business expenses.[81] (Intermediation services constitute a taxable supply and are, therefore, subject to GST if an intermediary is (or is required to be) GST registered.[82])

No specific tax is levied on crowdfunding platforms in New Zealand. Discussion on the introduction of a digital services tax ('DST') — a tax levied on the services of platform firms — took place in 2019.[83] Relevantly, a flat tax charged at three per cent on the gross turnover attributable to New Zealand of certain digital businesses, applied on a consolidated group basis, was proposed.[84] However, any DST would most likely have turnover-based *de minimis* thresholds in order to target large multinationals — a EUR750 million of consolidated annual turnover threshold and a New Zealand specific annual threshold of NZD3.5 million.[85] Given the small size of both New Zealand's economy and its domestic crowdfunding platforms, it is unlikely that any domestic crowdfunding platforms might ever exceed the *de minimis* thresholds proposed for the DST, if it were to be introduced. Crowdfunding platforms might also be exempt from a DST.

IV INCENTIVISING THE CROWD

Tax incentives can be expected to benefit fundraisers.[86] However, incentives may not be even-handed and may therefore skew investment decisions. This part of the article considers tax incentives for innovative companies and how these incentives may impact on the informing principle of equity crowdfunding.

A *Tax Incentives in Equity Crowdfunding*

Equity crowdfunding investors naturally expect a return on their investments.[87] This return can be negative (if the enterprise fails), zero (if investors are not able to assess the returns from the investment because a valuation of the entries has not been observed),

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80 Ibid s CB 1.

81 Ibid s DA 1(1).

82 *Goods and Services Tax Act* (n 44) ss 5(1), 6(1), 8(1).

83 In June 2019, the Inland Revenue Department invited public submissions on a DST proposal. See Grant Robertson and Stuart Nash, *Options for Taxing the Digital Economy: A Government Discussion Document* (Report, 4 June 2019) <http://taxpolicy.ird.govt.nz/sites/default/files/2019-dd-digital-economy.pdf>. For a discussion of the DST proposal, see Ben Walker, 'Analysing New Zealand's Digital Services Tax Proposal' (2019) 21(2) *Journal of Australian Taxation* 86.

84 Robertson and Nash (n 83) [3.17].

85 Ibid [3.25].

86 See, eg, Graw (n 23) 106.

87 Magdalena Cholakova and Bart Clarysse, 'Does the Possibility to Make Equity Investments in Crowdfunding Projects Crowd Out Reward-Based Investments?' (2015) 39(1) *Entrepreneurship Theory and Practice* 145.

or positive (if an enterprise is able to launch another crowdfunding campaign, receive finance from venture capitalists or business angels, or be subject to a merger or an acquisition).[88] The income risk of crowdfunding investors tends to be very high because a fundraiser is typically a start-up — or in a loss-making situation.

The tax system can share in income risk with investors by, for example, incentivising initial investment and income distribution. It can also share in capital risk by incentivising the investor's disposal of the investment. In both cases, investors are expected to assume the initial investment risk by contributing capital to a fundraiser.

Tax incentives for initial investment and income distribution effectively subsidise the cost of investment and, therefore, increase its value to an investor. These incentives may stimulate investments in start-ups because they reward new capital, instead of creating windfall gains for existing investors.[89] Tax incentives for the disposal of an investment are generally considered desirable if they incentivise investors to support the development and growth of the fundraiser, create jobs and lead to productive innovation.[90] From a broader economic perspective, tax incentives for the disposal of the investment encourage 'fast failure' of poorly performing businesses and thereby liberate capital that can be invested in better performing businesses.[91] The same tax incentive may sometimes encourage both investment risk and capital risk.

New Zealand encourages capital risk through its depreciation regime and light-handed taxation of capital gains. New Zealand's depreciation regime is well-developed,[92] with accelerated depreciation for eligible assets acquired before 21 May 2010.[93] New Zealand does not have a comprehensive capital gains tax ('CGT') regime. After intensive discussions, in 2019 the Labour-led government decided not to proceed with the Tax Working Group's recommendation for a comprehensive CGT.[94] New Zealand, therefore, will continue sharing the capital risk with investors. However, this sharing affects only sole traders and investors in flow-through entities[95] and therefore, is irrelevant to equity

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88 Andrea Signori and Silvio Vismara, 'Returns on Investments in Equity Crowdfunding', *SSRN* (2016) 4 <https://ssrn.com/abstract=2765488>.

89 'Position Paper on Tax Policy', *The Angel Association New Zealand* (Report, April 2018) [17]–[18] <https://www.angelassociation.co.nz/wp-content/uploads/2018/05/AANZ-Position-Paper-on-Tax-Policy-2018.pdf>.

90 Ibid. It is submitted, however, that tax incentives should be proportionate, inasmuch as they should rationally connect an express policy to a desired outcome.

91 Ibid.

92 *Income Tax Act* (n 45) sub-pt EE.

93 'General Depreciation Rates, IR265', *Inland Revenue Department* (Guide, April 2019) 2 <https://www.classic.ird.govt.nz/forms-guides/keyword/businessincometax/ir265-guide-general-depreciation-rates.html>.

94 Jacinda Ardern, 'Government Will Not Implement a Capital Gains Tax', *New Zealand Government* (Media Release, 17 April 2019) <https://www.beehive.govt.nz/release/government-will-not-implement-capital-gains-tax>.

95 According to the Tax Working Group, there were 469,000 sole traders, 97,500 general partnerships, 1,800 limited partnerships, and 254,100 trusts and 322,300 ordinary companies in New Zealand. See 'Tax Working Group Information Release' (Release Document, September 2018)

crowdfunding due to the requirement for a fundraiser to be a company. Furthermore, the depreciation regime and CGT are related to the disposal of investments and therefore, do not directly affect fundraisers — equity crowdfunding is an instrument for raising capital, rather disposing of it.

There are no crowdfunding tax incentives in New Zealand; the tax system therefore does not share investment risk with investors participating in equity crowdfunding. At the same time, specific tax incentives for fundraisers, such as incentives for start-ups[96] or innovative entities, may 'distract' crowdfunding investors and therefore, undermine the basic principle of group investment. The distraction problem is particularly relevant to New Zealand because of its syndication model — once a lead investor becomes distracted, the crowd is likely to follow. The next sections examine this problem.

B *Tax Incentives for Innovation*

New Zealand seeks to incentivise investment in innovation by extending income tax concessions for research and development ('R&D').[97] These incentives may nudge investors towards incentives-eligible over incentives-free fundraisers.

A company which derives assessable business income may claim a deduction for R&D expenses.[98] This general incentive is supplemented by two specific incentives: an R&D loss tax credit[99] and an R&D tax credit.[100] After 1 April 2015, an unlisted New Zealand-resident company qualifies for the R&D loss tax credit, subject to certain thresholds, and provided public entities hold fewer than 50 per cent of its shares.[101] The R&D loss tax credit allows an innovative resident company in a loss-making situation to improve its cash flow.[102] Up to 28 per cent of business losses from eligible R&D expenditure within

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<https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-bg-appendix-1--types-of-business-entities-in-new-zealand-and-how-they-are-taxed.pdf>. In fact, the number of trusts is unknown, since only trusts with taxable income must register with any government authority. Furthermore, the number of registered companies exceeds 600,000. See Jonathan Barrett and Ronán Feehily, *Understanding Company Law* (LexisNexis, 4th ed, 2019) 14.

96 Tax Working Group, *Future of Tax: Final Report Volume I — Recommendations* (21 February 2019) 17, 73–74 <https://taxworkinggroup.govt.nz/resources/future-tax-final-report-vol-i-html>. See also, Grant Robertson and Stuart Nash, 'Business Tax Changes Back Kiwi Companies to Innovate and Grow' (Media Statement, 23 September 2019) <http://taxpolicy.ird.govt.nz/news/2019-09-23-tax-initiatives-announced-support-businesses> ('Business Tax Changes Media Statement').

97 New Zealand Accounting Standards Board of the External Reporting Board, *New Zealand Equivalent to International Accounting Standard 38 Intangible Assets* (NZ IAS 38, 2014-18) [8] defines 'research' as 'original and planned investigation undertaken with the prospect of gaining new scientific or technical knowledge and understanding' and 'development' as 'the application of research findings or other knowledge to a plan or design for the production of new or substantially improved materials, devices, products, processes, systems or services before the start of commercial production or use.'

98 *Income Tax Act* (n 45) ss DB 34, DB 35.

99 Ibid sub-pt MX.

100 Ibid sub-pt LY.

101 Ibid s MX 2.

102 It is presumed that research and development ('R&D') expenditure is a proxy for innovation.

existing thresholds can be refunded, instead of being carried forward. The amount of an R&D loss tax credit is the lesser of the following: NZD476,000 for the tax year 2019–2020 (NZD560,000 from the tax year 2020–2021); or 28 per cent of the company's net loss or total R&D expenditure for the year; or 28 per cent of the company's total R&D labour expenditure for the year multiplied by 1.5.[103]

From the 2019–2020 income tax year, eligible persons can seek the R&D tax credit.[104] This credit is available to individuals who are residents in New Zealand and entities which are either resident in New Zealand or carrying on (or are treated as if they are carrying on) business in New Zealand through a fixed establishment.[105] The key elements of the R&D tax credit regime include a specific definition of 'research and development activity',[106] which is distinguished between 'core research and development activity'[107] and 'supporting research and development activity;[108] the necessity to file an R&D supplementary return[109] and either obtain (from the 2020–2021 income year)[110] a general approval for R&D activities (if expected R&D expenditure is less than NZD2 million)[111] or apply for recognition as a 'significant performer' (if expected R&D expenditure is NZD2 million or more).[112] A taxpayer who is eligible for the R&D tax credit must spend at least NZD50,000 on qualifying R&D,[113] and may claim 15 per cent eligible expenditure as an R&D tax credit, subject to a cap of NZD120 million.[114] From the start of 2020, R&D expenditure totalling less than NZD10,000 is immediately deductible.[115]

C *The Interplay between Crowdfunding Regulations and R&D Tax Incentives*

According to Graw, 'anything that encourages investors to support innovation is to be welcomed — particularly in the period between the initial stage of the business's lifecycle … and the commercialisation stage'.[116] However, it is crucial to note that in New Zealand the stated goal of equity crowdfunding is 'to facilitate the matching of companies which

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103 *Income Tax Act* (n 45) ss MX 4(1)(d)–(i).

104 *Taxation (Research and Development Tax Credits) Act 2019* (NZ) s 3 ('*Taxation (R&D Tax Credits) Act*').

105 For more detail and exemptions see *Income Tax Act* (n 45) s LY 3.

106 This definition differs from a definition of 'research and development activity' for the purposes of the R&D deductible expenditure and R&D tax loss credit.

107 *Income Tax Act* (n 45) s LY 2(1).

108 Ibid s LY 2(3).

109 *Tax Administration Act 1994* (NZ) s 33E ('*Tax Administration Act*').

110 For the 2019–2020 tax year, pilot rules applied. For more detail, see *Taxation (R&D Tax Credits) Act* (n 104) s 30.

111 *Tax Administration Act* (n109) s 68 CB.

112 Ibid s 68 CC.

113 *Income Tax Act* (n 45) s LY 4(1).

114 Ibid s LY 4(2), (3).

115 Robertson and Nash, 'Business Tax Changes Media Statement' (n 96).

116 Graw (n 23) 102.

wish to raise funds with many investors who are seeking to invest relatively small amounts'.[117] Unlike the United Kingdom or the United States, the New Zealand government has not expressly linked relaxed fundraising regulations with job creation, innovation or regional development.

Specific R&D tax incentives aim to boost innovation. The principal objectives of these incentives and of equity crowdfunding policy are different. There is a risk, therefore, that pursuit of innovation may undermine crowdfunding's principal objective and also breach the tax principle of neutrality. Of course, the government may be aware of these possibilities but, in the absence of any policy statement on a preference for innovative companies in equity crowdfunding, it may be assumed that any such preference is unintended.

R&D tax incentives and crowdfunding regulations may have the same overarching goal, that is, to build enduring businesses by improving their cash flows. R&D tax incentives improve the cash flow at the state's expense by reducing the income tax burden of eligible entities. Crowdfunding regulations improve the cash flow at the expense of private investors through the easing of security regulations for equity investments. However, two general differences distinguish the two policies. First, R&D tax incentives focus on innovative businesses, while equity crowdfunding aims to support any business that might generate a return on investment. For R&D tax incentives, 'innovative' is the core concept that determines whether an entity receives state support or not. In contrast, the financial support provided by private investors through equity crowdfunding depends on the ability of a fundraiser to demonstrate that it might generate a return on investment. Innovativeness does not matter in this context, in particular, because this quality itself does not guarantee a return on investment.[118] From an investor's perspective, R&D tax incentives encourage risk undertaking if an enterprise is innovative, whereas crowdfunding regulations encourage the undertaking of small risks in any businesses that can generate a return on investment. Furthermore, R&D tax incentives encourage innovative behaviour by a particular entity. Crowdfunding regulations incentivise group investment behaviour. These differences indicate that innovation by an individual entity should not undermine group investment behaviour.

Two abilities of a crowd are critical for choosing an appropriate fundraiser and building an enduring business — the ability to distinguish companies with good profit-making potential from those that are likely to fail ('screening ability'); and an ability to monitor the performance of fundraisers ('monitoring ability').[119] Tax incentives do not affect the monitoring ability of the crowd, however they may have an impact on the crowd's screening ability by distracting investors.

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117 Financial Markets Conduct Regulations (n 34) reg 185(1)(a).

118 See Kane (n 6) on job creation by start-ups in general, not specifically innovative start-ups.

119 Wei Chen, Mingfeng Lin and Bryan Zhang, 'Lower Taxes, Smarter Crowd? The Impact of Tax Incentives on Equity Crowdfunding' (Research Paper No. 18-27, Georgia Tech Scheller College of Business, 2018) 2 <https://ssrn.com/abstract=3206256>.

If only innovative companies were to seek funds through crowdfunding, there would be no distraction for a crowd, and all fundraising companies would compete for funds on an equal basis. However, when innovative and non-innovative companies compete for funds, the former's tax advantages may distract the crowd and prevent it from picking a likely winner from the entire pool of fundraisers. The United Kingdom's Seed Enterprise Investment Scheme ('SEIS') illustrates this possibility.[120]

According to Signori and Vismara, 'firms with at least one non-executive director and offerings eligible for the SEIS tax relief are 2.9 times more likely to being able to raise additional capital in second offerings made through equity crowdfunding.[121] Conversely, Chen et al found that, if tax incentives encourage investment in particular enterprises, they do not change the performance of these enterprises but do shift investors' attention to incentive-eligible firms and therefore, decrease the crowd's screening ability in relation to non-SEIS firms.[122] This finding suggests that tax incentives can indirectly encourage risk undertaking in the equity crowdfunding industry albeit only for investments in fundraisers that are eligible for particular tax incentives.

D *Discussion*

If a business is innovative, the state may choose to share investment risk with investors through general and specific tax incentives. However, only general tax incentives are

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120 PwC for the European Commission explains the operation of SEIS as follows:

> SEIS provides individuals making investments in young companies with an upfront tax credit, a capital gains tax deferral for reinvestment, a capital gains tax exemption for chargeable gains realised on disposal and loss relief on more favourable terms than the baseline tax system for capital losses realised on disposal. The scheme's ranking was driven by high scores across scope, qualifying criteria and administration. SEIS uses a combination of age, size and specific sector exclusions to target entrepreneurial firms. It restricts the participation of related parties, but has introduced allowances for business angels. It targets newly issued ordinary share capital, imposing a maximum investment value attracting tax relief and a minimum holding period. In terms of administration, SEIS is administered on a non-discretionary basis and is subject to transparent annual monitoring of fiscal costs.

See PwC, 'Effectiveness of Tax Incentives for Venture Capital and Business Angels to Foster the Investment of SMEs and Start-Ups, Final Report (No TAXUD/2015/DE/330 implementing the Framework Service Contract No TAXUD/2015/CC/131)', *European Commission* (Report, June 2017) 4 <https://ec.europa.eu/taxation_customs/sites/taxation/files/final_report_2017_taxud_venture-capital_business-angels.pdf>.

121 According to Signori and Vismara (n 88) 14–15:

> There are significant tax incentives for investing in small businesses in the UK. Two overlapping incentive programs are of particular interest to crowdfunding investors, as testified by the high visibility given to these programs on all the platforms. The Enterprise Investment Scheme (EIS) provides a tax deduction of 30 percent of the cost of shares purchased in qualifying private companies with a maximum tax benefit of £300,000. The Seed Enterprise Investment Scheme (SEIS) provides additional incentives by exempting shares up £150,000 in value from capital gains taxes. This amount is set as the standard maximum issuance sought by UK crowdfunding platforms such as Seedrs and Crowdcube, and exceptions can be granted only to issuers who present a "compelling proposition" subject to the platform's approval. EIS and SEIS are subject to a three year minimum holding period, with the relief being clawed back if shares are disposed earlier. This could create an incentive to postpone exit from crowdfunded firms.

122 Chen Lin and Zhang (n 119).

available to non-innovative businesses. Both innovative and non-innovative companies may pursue equity crowdfunding, although innovative companies offer investors additional tax advantages.

Research into the effects of SEIS on the screening ability of a crowd indicates that specific R&D tax incentives introduced in New Zealand may similarly undermine the fundamental goal of equity crowdfunding and harm the interests of non-innovative companies. The crowd may focus on R&D-eligible companies and ignore non-innovative companies, despite their potential to produce a good return on investment. Investment in innovative companies does not guarantee a return on investment.

Moreover, such investments may be riskier than investments in non-innovative companies because of an observed negative association between innovativeness and subsequent firm survival.[123]

Tax incentives are generally regarded as violating principles of sound tax policy and may limit progressivity in a tax system.[124] In particular, if tax credits for businesses cannot be utilised entirely, and in the same year when they have become available, they cannot be justified on efficiency grounds because only some of their value funds the targeted activity.[125] High-income business entities extract most benefits from tax credits, which raises concerns over taxpayer equity.[126] According to Musgrave and Musgrave:

> Tax relief for investment which does not pay for itself in generating additional growth not only involves revenue loss without gain but worsens the state of income distribution, by giving the relief to high incomes. Judged on these grounds, tax incentives to investment have been generally wasteful and inequitable, so much so that many observers have been led to reject all incentive devices.[127]

New Zealand's 'broad base, low rate' income tax system, and its informing principles of efficiency, equity and neutrality,[128] provide plausible grounds for arguing against tax

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123 See Ari Hyytinen, Mika Pajarinen and Petri Rouvinenb, 'Does Innovativeness Reduce Startup Survival Rates?' (2015) 30 *Journal of Business Venturing* 564.

124 See, eg, David Bruoni, 'The Limits of Justice: The Struggle for Tax Justice in the States' in Joseph J Thorndike and Dennis J Ventry Jr (eds), *The Ongoing Debate: Tax Justice* (The Urban Institute Press 2002) 211.

125 Mormann (n 58) 335–336.

126 Stanley S Surrey, *Pathways to Tax Reform; the Concept of Tax Expenditures* (Harvard University Press, 1973) 134.

127 Richard A Musgrave and Peggy B Musgrave, *Public Finance in Theory and Practice* (McGraw-Hill Book Company, 5th ed, 1989) 601–602.

128 See, eg, 'Financial Statements of the Government of New Zealand for the Year Ended 30 June 2019 Note 23', *The Treasury* (8 October 2019) <https://treasury.govt.nz/publications/year-end/financial-statements-2019>. See also the principles of responsible fiscal management as prescribed by the *Public Finance Act 1989* (NZ). Proposed principles for a good tax system typically include efficiency, administrative simplicity, flexibility, political responsibility (transparency), fairness (equity). See Stiglitz (n 21) 458.

incentives. However, according to Burman, 'voters like tax incentives',[129] and accordingly, the political pressure for tax incentives is likely to prevail.[130]

Musgrave and Musgrave emphasise that 'it is a task of tax policy to make sure that additions to growth are brought at the least equity cost'.[131]

Specific R&D tax incentives may contribute to the development of an innovative ethos among the New Zealand business community. However, encouragement of innovative behaviour through tax incentives should be distinguished from encouragement of group investments through equity crowdfunding. Otherwise, the former may undermine the latter, making crowd investment distorted, inefficient and unfair. Fundraising companies should be able to compete for investments on an equal footing, so that the crowd is able to pick a real 'winner'. Ringfencing equity crowdfunding from R&D tax incentives could help in reaching this policy goal and maintaining the well-balanced state's participation in risk-undertaking that New Zealand's light-handed crowdfunding regulations and its tax legislation have created. For example, equity crowdfunding could be ringfenced from R&D tax incentives by amending regulation 185(1)(a)(iii) of the Financial Markets Conduct Regulations 2014, by adding the phrase: '(other than recipients of R&D tax incentives)'. The amended regulation would then provide: 'the principal purpose of the facility is to facilitate the matching of companies [*(other than recipients of R&D tax incentives)*] which wish to raise funds with multiple investors who are seeking to invest relatively small amounts'.[132] Companies eligible for R&D tax incentives that wish to raise funds through equity crowdfunding should have the opportunity to opt-out from these specific tax incentives.

A theoretical alternative to the ringfencing proposed above could be a specific tax that would correct crowdfunding externalities. A tax levied on contributions made after a crowdfunding project has reached its funding goal would internalise overfunding externalities such as those caused by overshadowing other crowdfunding projects.[133] Similarly, it would be possible to impose a special tax on fundraising companies seeking finance through crowdfunding platforms but willing to receive specific R&D tax incentives. While it is not suggested that such measures are likely, the inconsistency between crowdfunding regulations and R&D tax incentives indicates the non-neutral treatment of innovative and non-innovative fundraisers which contradicts the basic rationale for equity crowdfunding.

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129 Leonard E Burman, 'Pathways to Tax Reform Revisited' (2013) 41(6) *Public Finance Review* 755, 756.

130 Musgrave and Musgrave (n 127) 601–602. Governments might also like to be associated with apparent winners, for example, blockbuster movies. See *Income Tax Act* (n 45) sub-pt DS.

131 Musgrave and Musgrave (n 127) 601–602.

132 Financial Markets Conduct Regulations (n 34) reg 185(1)(a)(iii).

133 Jascha-Alexander Koch, Jens Lausen, and Moritz Kohlhase, 'Towards Internalizing the Externalities of Overfunding – Introducing a "Tax" on Crowdfunding Platforms' (Research Paper No 125, Association for Information Systems 28 November 2018) <https://aisel.aisnet.org/ecis2018_rp/125>.

E *Contribution and Limitations*

The key research contribution of this article is to highlight the disjunction between the New Zealand government's crowdfunding policy and its R&D policy. It is not claimed that the article constitutes a major contribution to knowledge, nevertheless, it connects the research conducted in New Zealand on crowdfunding to R&D tax privileges. It is hoped the research will stimulate debate and, ideally, prompt discussion between crowdfunding regulators and tax policymakers. Tax practitioners advising a range of clients should be alert to differential tax treatment of otherwise similarly situated clients. As the research method employs analysis of key texts, it is principally descriptive in nature. It does not include other qualitative methods, such as interviews or surveys, or experimentation. Furthermore, it does not have quantitative features, such as original collection and analysis of data. The research should therefore be seen as an explorative exercise that could be expanded to include more qualitative and quantitative research methods.

V CONCLUSION

Both R&D tax incentives and light-handed crowdfunding regulations may help companies to improve their cash flows. However, this article has demonstrated that the interplay between these two policies may create a competitive advantage for innovative companies that is not available to non-innovative companies. It has been argued that to even out cash-improvement opportunities for non-innovative businesses, the state should compensate these businesses for the disadvantages that specific tax incentives, such as the R&D tax loss credit[134] and R&D tax credit,[135] create. Such compensation could be effected by extending advantages to non-innovative businesses. Ringfencing equity crowdfunding to non-innovative businesses (and businesses that opted out of the R&D tax incentives) or a specific tax levied on recipients of specific R&D tax incentives could create such a compensatory advantage and therefore, equalise opportunities for innovative and non-innovative businesses to improve their cashflows.

Furthermore, the government might consider allowing an extension of fundraiser status to flow-through entities, notably limited partnerships, so that crowdfunding investors could gain direct access to the fundraiser's profits and losses, and reap the value of tax credits, accelerated depreciation rates, and other tax incentives available to a fundraiser. Possible effects of this extension on the behaviour of the crowd would however require further examination.

To reiterate, these proposed interventions are unlikely to be enacted, although policymakers should be alert to any tax policies that might militate against job creation. Nevertheless, they highlight how the uneven tax treatment of innovative and non-innovative fundraisers may impact equity crowdfunding. It is incumbent on the government to neutralise these distortions or otherwise to expressly align crowdfunding policy with the pursuit of innovation.

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134 *Income Tax Act* (n 45) sub-pt MX.

135 Ibid sub-pt LY.

REFERENCES

A *Articles/Books/Reports*

Agrawal, Ajay, Christian Catalini and Avi Goldfarb, 'Some Simple Economics of Crowdfunding' (2014) 14(1) *Innovation Policy and the Economy* 63

Angerer, Martin, Alexander Brem, Sascha Kraus and Andreas Peter, 'Start-Up Funding via Equity Crowd-Funding in Germany – A Qualitative Analysis of Success Factors' (2017) 17(1) *Journal of Entrepreneurial Finance* 1

Barrett, Jonathan and Ronán Feehily, *Understanding Company Law* (LexisNexis, 4th ed, 2019)

Battista, Paul, 'The Taxation of Crowdfunding: Income Tax Uncertainties and a Safe Harbor Test to Claim Gift Tax Exclusion' (2015) 64(1) *University of Kansas Law Review* 143

Bradford, C Steven, 'Crowdfunding and the Federal Securities Laws' (2012) *Columbia Business Law Review* 1

Bruoni, David, 'The Limits of Justice: The Struggle for Tax Justice in the States' in Joseph J Thorndike and Dennis J Ventry Jr (eds), *The Ongoing Debate: Tax Justice* (The Urban Institute Press 2002)

Burman, Leonard E, 'Pathways to Tax Reform Revisited' (2013) 41(6) *Public Finance Review* 755

Cholakova, Magdalena and Bart Clarysse, 'Does the Possibility to Make Equity Investments in Crowdfunding Projects Crowd Out Reward-Based Investments?' (2015) 39(1) *Entrepreneurship Theory and Practice* 145

Graw, Stephen, 'Crowd-Sourced Funding – Was Tax Considered?' (2018) 13(1) *Journal of the Australasian Tax Teachers Association* 85

Hyytinen, Ari, Mika Pajarinen and Petri Rouvinenb, 'Does Innovativeness Reduce Startup Survival Rates?' (2015) 30 *Journal of Business Venturing* 564

Kamalnath, Akshaya and Nuannuan Lin, 'Crowd-Sourced Equity Funding in Australia – A Critical Appraisal' (2019) 47(2) *Federal Law Review* 288

Kane, Tim, 'The Importance of Startups in Job Creation and Job Destruction' (Foundation Research Series, Kauffman, July 2010)

Krelove, Russell, 'Taxation and Risk Taking' in Parthasarathi Shome (ed), *Tax Policy Handbook* (International Monetary Fund, 1995)

Martin, Fiona and Ann O'Connell, 'Crowdfunding: What Are the Tax Issues' (2018) 20 *Journal of Australian Taxation* 16

Ministry of Economic Development, 'Review of Securities Law Discussion Paper' (Report, June 2010) <https://www.mbie.govt.nz/assets/f56be9b821/review-of-secuities-law-dicsussion-document.pdf>

Mormann, Felix, 'Beyond Tax Credits: Smarter Tax Policy for a Cleaner, More Democratic Energy Future' (2014) 31(2) *Yale Journal on Regulation* 303

Musgrave, Richard A and Peggy B Musgrave, *Public Finance in Theory and Practice* (McGraw-Hill Book Company, 5th ed, 1989)

'Policy Statement PS14/4: The FCA's Regulatory Approach to Crowdfunding Over the Internet, and the Promotion of Non-Readily Realisable Securities by Other Media, Feedback to CP13/13 and Final Rules' *Financial Conduct Authority* (Report, March 2014) <https://fca.org.uk/publication/policy/ps14-04.pdf>

'Position Paper on Tax Policy', *The Angel Association New Zealand* (Report, April 2018) <https://www.angelassociation.co.nz/wp-content/uploads/2018/05/AANZ-Position-Paper-on-Tax-Policy-2018.pdf>

PwC, 'Effectiveness of Tax Incentives for Venture Capital and Business Angels to Foster the Investment of SMEs and Start-Ups, Final Report (No TAXUD/2015/DE/330 implementing the Framework Service Contract No TAXUD/2015/CC/131)' *European Commission* (Report, June 2017) <https://ec.europa.eu/taxation_customs/sites/taxation/files/final_report_2017_taxud_venture-capital_business-angels.pdf>

Salomon, Victoriya, 'Evolving Crowdfunding Models' in Landström, Hans, Annaleena Parhankangas and Colin Mason (eds), *Handbook on Research on Crowdfunding* (Edward Elgar, 2019)

Schwartz, Andrew A, 'Equity Crowdfunding in New Zealand' (2018) *New Zealand Law Review* 243

Shane, Scott A, *Fool's Gold?: The Truth Behind Angel Investing in America* (Oxford University Press, New York, 2008)

Signori, Andrea and Silvio Vismara, 'Returns on Investments in Equity Crowdfunding', *SSRN* (2016) <https://ssrn.com/abstract=2765488>

Stiglitz, Joseph E, *Economics of the Public Sector* (W W Norton & Company, 3rd ed, 2000)

Surrey, Stanley S, *Pathways to Tax Reform; the Concept of Tax Expenditures* (Harvard University Press, 1973)

Tenca, Francesca and Chiara Franzoni, 'Crowdfunding: Risk, Fraud and Regulation' in Hans Landström, Annaleena Parhankangas and Colin Mason (eds), *Handbook on Research on Crowdfunding* (Edward Elgar, 2019)

Walker, Ben, 'Analysing New Zealand's Digital Services Tax Proposal' (2019) 21(2) *Journal of Australian Taxation* 86

B *Legislation*

Companies Act 1993 (NZ)

Companies Act 2006 (UK)

Corporations Act 2001 (Cth)

Goods and Services Tax Act 1985 (NZ)

Financial Markets Conduct Act 2013 (NZ)

Financial Markets Conduct Regulations 2014 (NZ)

Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51)

Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325)

Financial Services and Markets Act 2000 (UK)

Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (UK)

Income Tax Act 2007 (NZ)

Jumpstart Our Business Startups Act of 2012, Pub L No 112-106

Public Finance Act 1989 (NZ)

Securities Act of 1993 15 USC

Takeovers Regulations 2000 (SR 2000/210)

Tax Administration Act 1994 (NZ)

Taxation (Research and Development Tax Credits) Act 2019 (NZ)

C *Other*

Chen, Wei, Mingfeng Lin and Bryan Zhang, 'Lower Taxes, Smarter Crowd? The Impact of Tax Incentives on Equity Crowdfunding' (Research Paper No. 18-27, Georgia Tech Scheller College of Business, 2018) <https://ssrn.com/abstract=3206256>

Coffee, John C, 'Statement of Professor John C Coffee, Jr, Adolf A Berle Professor of Law Columbia University Law School at Hearings Before the Senate Committee on Banking, Housing and Urban Affairs 'Spurring Job Growth Through Capital Formation While Protecting Investors', United States Senate (Washington DC, 1 December 2011)

Colao, JJ, 'Breaking Down the JOBS Act: Inside the Bill that Would Transform American Business', *Forbes* (online, 21 March 2012)

'Determination E12: Persons Excused from Complying with Section EA 3 of the Income Tax Act 2007', *Inland Revenue Department* (Report, 4 March 2009) <https://www.classic.ird.govt.nz/technical-tax/determinations/accrual/determinations-persons-excused-from-complying.html>

Financial Statements of the Government of New Zealand for the Year Ended 30 June 2019 Note 23', *The Treasury* (8 October 2019) <https://treasury.govt.nz/publications/year-end/financial-statements-2019>

'General Depreciation Rates, IR265', *Inland Revenue Department* (Guide, April 2019) <https://www.classic.ird.govt.nz/forms-guides/keyword/businessincometax/ir265-guide-general-depreciation-rates.html>

Gower, Patrick, 'Coronavirus: Up to 120,000 Kiwis Predicted to Lose Jobs – Economist' *Newshub* (Web Page, 7 June 2020) <https://www.newshub.co.nz/home/money/2020/06/coronavirus-up-to-120-000-kiwis-predicted-to-lose-jobs-economist.html>

Jacinda Ardern, 'Government Will Not Implement a Capital Gains Tax', *New Zealand Government* (Media Release, 17 April 2019) <https://www.beehive.govt.nz/release/government-will-not-implement-capital-gains-tax>

Keeper, Trish 'Equity Crowdfunding in New Zealand: A Progressive Experiment' (Working Paper No 103, Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington, September 2016)

Koch, Jascha-Alexander, Jens Lausen, and Moritz Kohlhase, 'Towards Internalizing the Externalities of Overfunding – Introducing a "Tax" on Crowdfunding Platforms' (Research Paper No 125, Association for Information Systems 28 November 2018) <https://aisel.aisnet.org/ecis2018_rp/125>

'Many Scrappy Returns', *The Economist* (United Kingdom, 19 November 2011)

New Zealand Accounting Standards Board of the External Reporting Board, *New Zealand Equivalent to International Accounting Standard 38 Intangible Assets* (NZ IAS 38, 2014-18)

The *Oxford English Dictionary* (online ed)

'Peer-to-Peer and Crowdfunding: Sector Snapshot', *Financial Markets Authority* (Report, 5 December 2019) <https://www.fma.govt.nz/news-and-resources/reports-and-papers/peer-to-peer-and-crowdfunding-sector-snapshot>

Robertson, Grant and Stuart Nash, 'Business Tax Changes Back Kiwi Companies to Innovate and Grow' (Media Statement, 23 September 2019) <http://taxpolicy.ird.govt.nz/news/2019-09-23-tax-initiatives-announced-support-businesses>

Robertson, Grant and Stuart Nash, *Options for Taxing the Digital Economy: A Government Discussion Document* (Report, 4 June 2019) <http://taxpolicy.ird.govt.nz/sites/default/files/2019-dd-digital-economy.pdf>

'Spotlight on Jumpstart Our Business Startups (JOBS) Act', *Securities Exchange Commission* <https://www.sec.gov/spotlight/jobs-act.shtml>

'Statistical Report on Peer-to-Peer Lending and Crowdfunding in New Zealand', *Financial Markets Authority* (Report, 23 November 2018) <https://public.tableau.com/profile/fmaadmin#!/vizhome/Reg_returns_final_version_0/Story1>

'Tax Working Group Information Release' (Release Document, September 2018) <https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-bg-appendix-1--types-of-business-entities-in-new-zealand-and-how-they-are-taxed.pdf>

Tax Working Group, *Future of Tax: Final Report Volume I — Recommendations* (21 February 2019) <https://taxworkinggroup.govt.nz/resources/future-tax-final-report-vol-i-html>

EDUCATIONAL

BUILDING STUDENTS' SELF-EFFICACY THROUGH THE 'TAX FIRM' CASE STUDIES: THE EFFECT OF PRIOR PROFESSIONAL WORK EXPERIENCE

BRETT FREUDENBERG* AND ANNA MORTIMORE**

ABSTRACT

The future of many professions is uncertain, which could mean the skills of graduates may need to be different to those of prior generations. However, some things appear to remain the same as business leaders continue to specify the importance of communication, problem solving and skills adaptability. A key to this could be to improve students' self-efficacy (confidence), both in terms of generalised self-efficacy and task-specific self-efficacy that is relevant to their professional careers, as it could assist students' in their future careers. This article describes how a simulated on-campus work-integrated learning ('WIL') case study, through the establishment of professional tax firms in tutorials, sought to enhance students' self-efficacy. The results demonstrate that, in aggregate, there was growth in self-efficacy; however, students with little or no professional work experience had the greatest increase in self-efficacy. This demonstrates how important simulated WIL experiences can be for students with little professional work experience to obtain a better sense of their future professional work, as well as to improve their own confidence looking to the future.

Keywords: self-efficacy, work-integrated learning, professional identity, business awareness

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I INTRODUCTION

The future of many professions is uncertain, especially with advances in artificial intelligence,[1] changes in work practices including outsourcing entry level tasks, and increased casualisation.[2] This may mean that the skills of graduates need to be different to those of prior generations. For example, professional accountants will no longer be the information provider and record keeper, as they move to adopt the role of business advisor and analyst.[3]

With regard to the accounting profession, the Chartered Accountants Australia and New Zealand professional body has noted that there needs to be a greater focus on skills and their portability,[4] especially given the potential need for individuals to move between jobs. However, some things appear to remain the same as business leaders continue to specify that the important skills of the future are similar to those of the past, being: communication, problem solving and adaptability.[5] These generic skills are similar to what prior studies over the last two decades have repeatedly specified.[6] Additionally, team skills are essential, as business leaders view collaboration and the ability to quickly

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1 Mark Freeman and Paul Wells, 'Reducing the Expectation Gap: Using Successful Early Career Graduates to Identify the Capabilities that Count' in Elaine Evans, Roger Burritt and James Guthrie (eds), *Future Proofing the Profession: Preparing Business Leaders and Finance Professionals for 2025* (Chartered Accountants Australia and New Zealand, 2015) 67–78.

2 Sally Chaplin, 'Accounting Education and the Prerequisite Skills of Accounting Graduates: Are Accounting Firms' Moving the Boundaries?' (2017) 27(1) *Australian Accounting Review* 61.

3 W Steve Albrecht and Robert J Sack, *Accounting Education: Charting the Course through a Perilous Future* (American Accounting Association, 2000). Nas Ahadiat and Rose M Martin, 'Attributes, Preparations and Skills Accounting Professionals Seek in College Graduates for Entry-Level Positions vs. Promotion' (2015) 8(1) *Journal of Business and Accounting* 179.

4 Chartered Accountants Australia and New Zealand ('CAANZ'), *The Future of Talent: Opportunities Unlimited* (Report, CAANZ, November 2017) 18.

5 Ibid.

6 See, eg, Irene Tempone et al, 'Desirable Generic Attributes for Accounting Graduates into the Twenty-First Century: The Views of Employers' (2012) 25(1) *Accounting Research Journal* 41; Seedwell T M Sithole, 'Quality in Accounting Graduates: Employer Expectations of the Graduate Skills in the Bachelor of Accounting Degree' (2015) 11(22) *European Scientific Journal* 165; Binh Bui and Brenda Porter, 'The Expectation-Performance Gap in Accounting Education: An Exploratory Study' (2010) 19(1–2) *Accounting Education: An International Journal* 23; Mary Low et al, 'Accounting Employers' Expectations – The Ideal Accounting Graduates' (2016) 10(1) *e-Journal of Business Education & Scholarship of Teaching* 36; Daniel Bishop, 'Context, Agency and Professional Workplace Learning: Trainee Accountants in Large and Small Practices' (2017) 59(5) *Education + Training* 516; Marie Kavanagh and Lyndal Drennan, 'What Skills and Attributes Does an Accounting Graduate Need?' (2008) 48 *Accounting and Finance* 279; Beverley Jackling and Paul De Lange, 'Do Accounting Graduates' Skills Meet the Expectations of Employers? A Matter of Convergence or Divergence' (2009) 18(4–5) *Accounting Education* 369; Peipei Pan and Hector Perera, 'Market Relevance of University Accounting Programs: Evidence from Australia' (2012) 36 *Accounting Forum* 91; James Rebele and E Kent St Pierre, 'Stagnation in Accounting Education Research' (2015) 33(2) *Journal of Accounting Education* 128.

build relationships as important,[7] including professional knowledge and expectations of what it means to be a professional.[8]

Although it would be fanciful to think that the identification of these skills is certain, as there is an element of uncertainty as to which skills are required for newly prepared graduates entering the profession.[9] This uncertainty and variability is compounded by the fact that graduates may gain employment in a wide variety of employment contexts, outside the traditional notion of, for example, an accountant.

Furthermore, the transition from university to their future professional career can be challenging for students, as the knowledge and skills that may have created academic success may not directly translate into the workplace.[10] Although, many students are not waiting for graduation to seek professional job opportunities, with more university students working while studying, some students are employed in para-professional roles relevant to their degree.[11]

Given the future uncertainties with career paths and fluidity, self-efficacy (confidence) could be an important attribute for students to see themselves as having the perceived capability and skills required to successfully manage their career choice decisions.[12] It is argued that part of the ability to improve students' skills is to aid their development of self-efficacy (confidence), both in terms of generalised self-efficacy and task-specific self-efficacy that is relevant to their professional careers. That is, students' belief about their personal capabilities.[13] A person's confidence is important as it can affect their future actions and confidence to face new challenges. It is argued that learning activities that assist in developing students' self-efficacy, as well as their skills, should be considered.

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7 CAANZ (n 4) 18.

8 Beverley Oliver, 'Redefining Graduate Employability and Work-Integrated Learning: Proposals for Effective Higher Education in Disrupted Economies' (2015) 6(1) *Journal of Teaching and Learning for Graduate Employability* 56.

9 Bryan Howieson et al, 'Who Should Teach What? Australian Perceptions of the Roles of Universities and Practice in the Education of Professional Accountants' (2014) 32 *Journal of Accounting Education* 259; Tempone et al (n 6); Sithole (n 6).

10 Denise Jackson, 'Re-Conceptualising Graduate Employability: The Importance of Pre-Professional Identity' (2016) 35(5) *Higher Education Research & Development* 925.

11 For example, full-time undergraduates are working longer hours with their average hours of work increasing nearly threefold from 5 hours per week in the 1980s to 14 hours per week in the early 2000s: Don Anderson, Richard Johnson and Lawrence Saha, *Changes in Academic Work: Implications for Universities of the Changing Age Distribution and Work Roles of Academic Staff* (Commonwealth of Australia, 2002). Research has demonstrated that depending upon the hours worked and whether it is a 'career' job, this increased work commitment can have an effect on whether or not students complete their degree: Cain Polidano and Rezida Zakirova, *Outcomes from Combining Work and Tertiary Study* (Report, Melbourne Institute of Applied Economic and Social Research, 2011) 8.

12 Daniela Spanjaard, Tim Hall and Nicole Stegemann, 'Experiential Learning: Helping Students to Become "Career Ready"' (2018) 26 *Australasian Marketing Journal* 163, 164.

13 Albert Bandura, *Self-Efficacy: The Exercise of Control* (W H Freeman, 1997) ('*Self-Efficacy: The Exercise of Control*').

For example, self-confidence has been identified as critical in the development of students' communication skills.[14]

Work-integrated learning ('WIL'), is one way to provide greater professional context for students, in addition to developing their generic skills and self-efficacy. Studies have demonstrated that off-campus WIL, such as internships, can directly impact self-efficacy. For example, positive growth in students' self-efficacy has been demonstrated in a business school context with WIL experiences including a Student-Industry Conference[15] and Employment Ready Program.[16] However, WIL does not always improve students' self-efficacy.[17] For example, it has been demonstrated that with self-reported self-efficacy, students may be over-confident in their ability prior to an off-campus WIL experience, however, following the WIL experience an internal re-calibration process may provide the student with a more accurate (lower) perception of their ability and self-efficacy.[18] This, of itself, is not necessarily bad as having a more accurate account of one's ability means that relevant activities can be identified to develop relevant skills and abilities.

However, off-campus WIL can be problematic in that access for all students may be limited to academic requirements (such as possessing a certain grade point average), the availability of positions, and/or students' reluctance and fear to engage in the experience.[19]

Accordingly, a compromise could be simulated on-campus WIL activities, such as a real-life case studies.[20] Such simulated on-campus WIL activities may provide a way to improve students' self-efficacy, both in terms of generalised and task-specific self-efficacy. For undergraduate students, it could be assumed that they may have little relevant professional experience and therefore, simulated case studies need to be

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14 Lamar Reinsch (Jnr) and Annette N Shelby, 'Communication Challenges and Needs: Perceptions of MBA Students' (1996) 59(1) *Business Communication Quarterly* 36.

15 Brett Freudenberg et al, 'A Penny for Your Thoughts: Can Participation in a Student-Industry Conference Improve Students' Presentation Self-Efficacy and More?' (2008) 15(5) *The International Journal of Learning* 188 ('A Penny for Your Thoughts').

16 Nava Subramaniam and Brett Freudenberg, 'Preparing Accounting Students for Success in the Professional Environment: Enhancing Self-Efficacy Through a Work Integrated Learning Program' (2007) 8(1) *Asia-Pacific Journal of Cooperative Education* 7.

17 Franziska Trede, 'Role of Work-Integrated Learning in Developing Professionalism and Professional Identity' (2012) 13(3) *Asia-Pacific Journal of Cooperative Education* 159; Mark Brimble et al, 'Collaborating with Industry to Develop Financial Planning Education' (2012) 6(4) *Australasian Accounting Business and Finance Journal* 79.

18 Brett Freudenberg et al, 'I Am What I Am: Am I? The Development of Self-Efficacy Through Work Integrated Learning' (2013) 19(3) *The International Journal of Learning* 177.

19 Sharon Hayes, Brett Freudenberg and Deborah Delaney, 'Role of Tax Knowledge and Skills: What are the Graduate Skills Required by Small to Medium Accounting Firms' (2018) 13(1) *Journal of Australasian Tax Teachers Association* 152.

20 Note this article describes an on-campus learning environment. With the move for more online delivery (given Covid-19) similar WIL could be delivered in an online format, which is discussed in Part VI of this article.

supported with traditional teaching modes (such as lectures). However, what happens if undergraduate students do — or do not — have substantial professional work experience ('PWE')? In the related area of financial planning, students with prior work experience in financial planning perceived less difficulty in a simulated WIL activity regarding a Statement of Advice for a client.[21] Of particular interest to this article however, is the effect of prior PWE on students' self-efficacy development when exposed to a simulated WIL activity and whether there are differences between students with low and high PWE.

It has also been demonstrated that students with limited professional experience can benefit from participation in WIL.[22] For example, Satchakova and Taube found that in a study of self-efficacy of near-graduate students, those students with part-time work had greater levels of self-efficacy.[23] Students without relevant prior work experience had reported greater growth in the self-efficacy measures compared to students with industry experience.[24] Tang et al also found a link between prior related work experience and self-efficacy for counselling students, with students possessing greater prior related work experience having greater self-efficacy.[25]

It is hypothesised that simulated WIL may be particularly advantageous in improving the self-efficacy for those students with low PWE. For low PWE students the thought of commencing professional work can seem foreign and intimidating, and they may experience low self-efficacy, especially in terms of starting a career. In comparison, it is uncertain what advantages a simulated WIL, if any, might provide students with higher PWE, given their prior exposure to professional work.

This article describes how an on-campus simulated WIL case study involving problem solving, and both experiential and cooperative learning was developed to aid the development of students' self-efficacy. This was sought to be achieved through the establishment of professional firms in tutorials. Relevantly, students were appointed to professional tax advisory firms and were treated as employees working on client case studies each week while their boss (the tutor) mentored them as they developed their tax advice. It was thought that such a simulated WIL experience, may enhance students' self-efficacy and their professional awareness.

Against this background, Part II reviews the literature concerning the skills that graduates require when commencing employment, and the role of self-efficacy and WIL in developing such skills. Part III details the innovations adopted for the creation of the

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21 Michelle Cull, 'Learning to Produce a Financial Plan: Student Perceptions of Integrating Knowledge and Skills' (2019) 5(1) *Financial Planning Research Journal* 29, 43.

22 Mahmoud Haddara and Heather Skanes, 'A Reflection on Cooperative Education: From Experience to Experiential Learning' 8(1) *Asia-Pacific Journal of Cooperative Education* 67.

23 Lioubov Satchakova and Alex Taube, 'The Role of Self-Efficacy on Accounting Near-Graduate Students' Employment Outcomes' (2020) 10(2) *International Journal of Academic Research in Business and Social Sciences* 814.

24 Brett Freudenberg et al, 'A Penny for Your Thoughts' (n 15) 195.

25 Mei Tang et al, 'Factors that Influence Self-Efficacy of Counselling Students: An Exploratory Study' (2004) 44(1) *Counselor Education and Supervision* 70.

Firm. Part IV then proceeds to outline the research methodology, prior to the results being collated in Part V. A number of observations and recommendations — in addition to possible avenues for future research — are explored in Part VI, before the article concludes in Part VII.

II LITERATURE REVIEW

This part proceeds to examine the literature relevant to developing graduate skills and enhancing self-efficacy by exploring current concerns about a skills gap for university students. This will be followed by examining the foundations of building self-efficacy in the context of WIL activities.

A *Skills Gap*

The role of universities and their students has been subject to critique, including the purpose of tertiary education and to what extent this should relate to students' future professional careers. Some scholars argue that tertiary graduates need to be able to demonstrate those skills that are necessary for their future employment;[26] this can be more than just disciplinary knowledge, but encompass particular human behaviours, dispositions and capabilities.[27] One reason students attend university is to attain employment, which is especially true for 'professional' degrees that lead to a well-defined career path.[28] Though, it is questionable whether universities have been successful in developing the knowledge *and* skills that students require for work. Broadly, there appears to be some support from employers that universities can provide a 'strong knowledge base', however questions arise as to what extent students are equipped with the skills necessary to apply their knowledge in a work context.[29] Some studies have highlighted concerns in relation to accounting knowledge. Relevantly, Rebele and St. Pierre, when analysing accounting education literature ranging from 1991 to 2015, found a growing gap between accounting education and the requirements of practitioners, particularly in relation to accounting knowledge.[30] Even with accreditation of degrees, accounting programs may not meet the learning outcomes expected by the profession,[31]

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26 Barbara De la Harpe and Christina David, 'Major Influences on the Teaching and Assessment of Graduate Attributes' (2012) 31(4) *Higher Education Research & Development* 493.

27 Samantha Sin and Nicholas McGuigan, 'Fit for Purpose: A Framework for Developing and Assessing Complex Graduate Attributes in a Changing Higher Education Environment' (2013) 22(6) *Accounting Education* 522.

28 Stephen E Newstead, Arlene Franklyn-Stokes and Penny Armstead, 'Individual Differences in Student Cheating' (1996) 88(2) *Journal of Educational Psychology* 229.

29 Precision Consultancy, *Graduate Employability Skills*: *Prepared for Business, Industry and Higher Education Collaboration Council* (Report, Precision Consultancy, August 2007) 2.

30 Rebele and Kent St Pierre (n 6).

31 Leopold Bayerlein and Mel Timpson, 'Do Accredited Undergraduate Accounting Programmes in Australia Meet the Needs and Expectations of the Accounting Profession?' (2017) 59(3) *Education + Training* 305.

and this is where a students' confidence (self-efficacy) could play a role in assisting their development, both in terms of their knowledge and generic skills.[32]

Additionally, there is concern about the generic skills of students[33] as numerous studies have found that accounting graduates lack important generic skills. For example, a survey of 92 employers by Gardner and Liu found that accounting graduates' skills in writing, presenting and interaction were deficient.[34] Accounting graduates have reported that the focus of their degrees concerned technical skills, whereas employers rated generic skills above technical skills, in particular team skills, leadership and verbal communication.[35] This is concerning as these skills are perceived to be critical for the future of the profession as a whole due to the rapid and extensive changes occurring in both domestic and global environments. A consistent theme appears — accounting educators are failing to promote students' communication, problem solving and interpersonal skills.[36] Using a frequency analysis, Tempone et al found that of the non-technical skills, employers identified communication, teamwork and interpersonal skills, and self-management as the most critical for accounting graduates in the twenty-first century.[37] Similarly, Hayes et al found that small and medium accounting firms confirmed the importance of communication skills (including verbal, written and listening), interpersonal skills, teamwork and attitude/willingness to learn.[38]

Ultimately, this may mean that the employability of graduates is questionable if they do not have the '… skills, understandings and personal attributes – that makes graduates more likely to gain employment and be successful in their chosen occupations ...'.[39]

B *Self-Efficacy*

It is important to appreciate that it is not just skills (whether technical or generic) that graduates need to attain, as their ability to develop these skills can be influenced by their

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32 Albert Bandura, 'Self-Efficacy Mechanism in Human Agency' (1982) 37(2) *American Psychologist* 122, 122 ('Self-Efficacy Mechanism in Human Agency').

33 Christine Yap, Suzanne Ryan and Jackie Yong, 'Challenges Facing Professional Accounting Education in a Commercialised Education Sector' (2014) 23 *Accounting Education* 562.

34 Philip D Gardner and Wen-Ying Liu, 'Prepared to Perform? Employers Rate Work Force Readiness of New Grads' (1997) 57(3) *Journal of Career Planning and Employment* 52.

35 Jackling and De Lange (n 6).

36 Ralph W Adler and Markus J Milne, 'Improving the Quality of Accounting Students' Learning Through Action-Oriented Learning Tasks' (1997) 6(3) *Accounting Education* 191. See, eg, Nabil Ibrahim and John Angelidis, 'The Relative Importance of Ethics as a Selection Criterion for Entry-Level Public Accountants: Does Gender Make a Difference?' (2009) 85(1) *Journal of Business Ethics* 49; Beverley Jackling and Kim Watty, 'Generic Skills' (2010) 19(1–2) *Accounting Education* 1; Jackling and De Lange (n 6). 'Regarding the skills accounting graduates should possess, all of the employer interviews considered communication skills (oral, written and interpersonal) to be essential … also teamwork skills.': Bui and Porter (n 6) 34

37 Tempone et al (n 6).

38 Hayes, Freudenberg and Delaney (n 19) 170.

39 Mantz Yorke, 'Employability in Higher Education: What it is, what it is Not' (Series 1, The Higher Education Academy, 2006) 8.

self-efficacy (confidence). Bandara argues that a lack of self-efficacy can reduce students' ability to perform tasks in the workplace, as 'capability is only as good as its execution'.[40] Self-efficacy is an individual's 'beliefs in [their] capabilities to organize and execute the courses of action required to produce given attainments'.[41] The concept of self-efficacy focuses on an individual's belief regarding their capabilities, which in turn may influence their own level of functioning, and consequently their performance.[42] Conceptually, a person may have more general perceptions of their capabilities that can apply to a wide range of situations (generalised self-efficacy), or their capabilities about a specific domain or tasks (task-specific self-efficacy).[43]

Self-efficacy can be positively related to performance, satisfaction, academic persistence, choice of career opportunities, and once the student enters the workplace, career competency.[44] For example, self-efficacy has been found to be a predictor of persistence in studies for Australian first year university students,[45] and academic performance.[46]

Spanjaard, Hall and Stegemann state 'that to encourage success, students need to hold a certain belief in their ability to achieve this, or in other words their "career self-efficacy"'.[47] It appears that students will devote more efforts to their career planning when they have higher levels of self-efficacy.[48]

Self-efficacy could be bundled with a set of attitudes (distinct from skills) that can influence graduates' success in the workplace, including 'doing what is expected of them', 'can-do attitude', 'common sense' and 'confidence'.[49] However, the effect of learning activities on students can be influenced by exposure to prior relevant PWE, which can lead to significant differences. Cull found that in respect of financial planning students and their perceptions towards compiling a Statement of Advice (a simulated case study), those students with PWE in personal financial planning had significant differences to

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40 Bandura, 'Self-Efficacy Mechanism in Human Agency' (n 32) 122.

41 Bandura, *Self-Efficacy: The Exercise of Control* (n 13) 3.

42 Albert Bandura, 'Self-Efficacy: Toward a Unifying Theory of Behavioral Change' (1977) 84(2) *Psychological Review* 191.

43 Bandura, *Self-Efficacy: The Exercise of Control* (n 13).

44 Bandura, 'Self-Efficacy Mechanism in Human Agency' (n 32); Marilyn Gist and Terence Mitchell, 'Self-Efficacy: A Theoretical Analysis of its Determinants and Malleability' (1992) 17(2) *Academy of Management Review* 183.

45 Petrina Quinn and Brian Hemmings, 'The Role of Personal and Environmental Factors in Predicting Persistence and Satisfaction in Tertiary Agricultural Study' (Conference Paper, Australian Association for Research in Education Conference, Global Issues and Local Effects: The Challenge for Educational Research, 27 November–2 December 1999).

46 Kirsten McKenzie and Rober Schweitzer, 'Who Succeeds at University? Factors predicting Academic Performance in First Year Australian University Students' (2001) 20(1) *Higher Education Research and Development* 21.

47 Spanjaard, Hall and Stegemann (n 12) 164.

48 Ibid.

49 Rob Jones, 'Bridging the Gap: Engaging in Scholarship with Accountancy Employers to Enhance Understanding of Skills Development and Employability' (2014) 23(6) *Accounting Education* 527, 533.

those students with no employment or students with work experience in non-personal financial planning.[50]

Another attribute valued by employers is graduates having a developed professional identity and understanding of the requirements of working as a member of a profession.[51] Trede found in a literature review analysis that higher education professional identity is typically expected to emerge 'naturally' within learners as they progress through a higher education program.[52] This need not be the case, as active steps can be taken to design university curriculum that actively fosters professional identity by providing opportunities to reflect on feedback and increase self-awareness, develop students' capacity to interact with the complexities of their environments, and to experiment with trial and error.[53]

As mentioned in Part I, self-efficacy may be important for students being able to witness themselves possessing the capability and skills required to successfully manage their career choice decisions.[54]

Of course, individuals can — and will — have different levels of self-efficacy, and given its potential to influence behaviour and performance, it is important to consider how self-efficacy can be developed. Self-efficacy can be developed through learning, experience and feedback.[55] There are four categories of experiences that aid the development of self-efficacy: mastery experiences, modelling, social persuasion, and judgments of own physiological states.[56]

Relevantly, the development of self-efficacy through 'mastery' involves students being given opportunities to master an idea or concept.[57] Students involved with WIL-type activities can lead to eventual mastery as students are able to practice (and improve) the skills they have been taught in class.[58]

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50 Cull (n 21) 42–43.

51 Bui and Porter (n 6) 46.

52 Trede (n 17).

53 David Boud and Nancy Falchikov, 'The Role of Assessment in Preparing for Lifelong Learning: Problem and Challenges' in Anton Havnes and Liz McDowell (eds), *Balancing Dilemmas in Assessment and Learning in Contemporary Education* (Routledge, 2008) 87.

54 Spanjaard, Hall and Stegemann (n 12) 164.

55 Gist and Mitchell (n 44).

56 Bandura, 'Self-Efficacy Mechanism in Human Agency' (n 32); Robert Wood and Albert Bandura, 'Social Cognitive Theory of Organizational Management' (1989) 14(3) *Academy of Management Review* 361; Sanjib Chowdhury, Megan Lee Endres and Thomas W Lanis, 'Preparing Students for Success in Team Work Environments: The Importance of Building Confidence' (2002) 14(3) *Journal of Managerial Issues* 346.

57 Chowdhury, Endres and Lanis (n 56).

58 Mary L Tucker and Anne M McCarthy, 'Presentation Self-Efficacy: Increasing Communication Skills Through Service-Learning' (2001) 13 (2) *Journal of Managerial Issues* 227.

Observation and comparison with others can allow for the enhancement of self-efficacy through 'modelling'.[59] Modelling can be useful in seeing the mechanisms that others have used to manage difficult situations. Meanwhile, 'verbal persuasion' can be particularly effective when individuals receive realistic encouragement, particularly from a credible source.[60]

The fourth category of experiences that improve an individuals' self-efficacy focuses on developing the individual's awareness of their physiological state, especially when confronted with a task. This self-awareness can assist individuals to modify (or manage) their physiological state, thereby enabling self-efficacy to be improved.[61]

WIL opportunities, including simulations, can provide opportunities for these four categories of experiences to improve self-efficacy.[62] In particular, WIL experiences can provide the platform to aid the development of self-efficacy through mastery (i.e. performance accomplishments) and verbal/social persuasion (i.e. feedback loop).[63] Coll et al found that students in science and technology increased their self-efficacy when participating in cooperative education, as they gained domain-specific knowledge and feedback from work supervisors.[64] Furthermore, real-world simulations as part of tertiary studies can develop students' competencies well beyond their mere technical knowledge.[65] Freudenberg, Cameron and Brimble,[66] found that for students involved in a simulated WIL Program over 12 months, there was generally an increase in 20 of the 21 measures of self-efficacy, with the biggest growth in self-efficacy relating to their 'future employment'.

Notwithstanding, given students' various personal experiences, their development of self-efficacy could be influenced by the extent to which they have already engaged in prior PWE. For example, it was found that students participating in the WIL experience of a student-industry conference without relevant prior work experience (in the financial planning industry) reported the highest growth in the self-efficacy measures (63.7 per cent), compared to 43.2 per cent for students with industry experience.[67] This is supported by Cull, who found students without full-time work perceived more difficulty

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59 Ibid.

60 Wood and Bandura (n 56).

61 Ibid.

62 Subramaniam and Freudenberg (n 16).

63 Joyce K Fletcher, 'Self Esteem and Cooperative Education: A Theoretical Framework' (1990) 26(3) *Journal of Cooperative Education* 41.

64 Richard K Coll, Mark Lay and Karsten E Zegwaard, 'The Influence of Cooperative Education on Student Self-Efficacy Towards Practical Science Skills' (2001) 36(2) *Journal of Cooperative Education* 58.

65 Adrian J Sawyer, Stephen R Tomlinson and Andrew J Maples, 'Developing Essential Skills Through Case Study Scenarios' (2000) 18(3) *Journal of Accounting Education* 257.

66 Brett Freudenberg, Craig Cameron and Mark Brimble, 'The Importance of Self: Developing Students' Self Efficacy Through Work Integrated Learning' (2010) 17(10) *The International Journal of Learning* 479, 487.

67 Brett Freudenberg et al, 'A Penny for Your Thoughts' (n 15) 195.

in simulated WIL activities, especially compared to students work experience in the area related to simulation.[68] Cull noted how a student without relevant industry work experience felt their learning would be enhanced with greater exposure to the practical side of a simulated WIL experience, including industry visits, real life scenarios and industry guest lectures.[69] Cull links this to the notion of Kolb et al's experiential learning, which advocates for experiential activities and simulations.[70] Haddara and Skanes argue that those students with the least professional experience can benefit from participation in WIL.[71] For counselling students, prior work experience has been linked with greater self-efficacy.[72] Additionally, students with part-time work have been found to have greater levels of self-efficacy.[73]

Consequently, while a simulated WIL experience may provide the foundations to improve self-efficacy, a student's own PWE could influence this development. The next Part proceeds to outline the design of the simulated WIL experience created for tax students in the context of this study.

III CREATING THE FIRM

To provide the potential opportunity for the development of students' self-efficacy (and their understanding of the profession), communication, team and problem-solving skills, a case study involving active and cooperative learning was developed for a third-year course, advance tax, which is part of an undergraduate accounting degree. This is described below, as well as highlighting how the four categories of experiences (i.e. mastery, modelling, social persuasion and judgments of own physiological states) that aid the development of self-efficacy were facilitated.

A *Course Design*

Numerous strategic alterations were made to the design and delivery of the tutorial to assist in developing students' self-efficacy. This re-configuration of the tutorial also resulted in subtle changes that enabled a more authentic formative learning environment. Additionally, it was hoped that several generic skills (for example, professional understanding, communication, team and problem-solving skills) would be developed. These skills are particularly relevant to students' studying an advance tax course, as many students would be in their final year of study.

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68 Cull (n 21).

69 Ibid 45.

70 David Kolb et al, 'Strategic Management Development: Using Experiential Learning Theory to Assess and Develop Managerial Competencies' (1986) 5(3) *Journal of Management Development* 13.

71 Haddara and Skanes (n 22).

72 Tang et al (n 25).

73 Satchakova and Taube (n 23).

1 *Time Allocation*

To provide students with sufficient time to address the case study in a meaningful way, two hours was allowed for tutorials, rather than the normal one hour. To make this revenue neutral for the university, one-hour tutorials of 25 students were converted to two-hour tutorials of 50 students. This allowed additional time for group (firm) activities (including additional research and clarification), presentations and summaries. This was based on previous experience where one hour, even with the most basic of case studies, could be insufficient to allow time for critical reflection and discussion to occur. This additional time would provide the space (and opportunity) for greater learning and reflection to occur.

2 *The Firm*

Furthermore, rather than being allocated to 'groups', students were allocated to tax 'firms' within tutorials. To complement this, the tutor assumed the role of 'boss' of the firm, to provide guidance and mentoring to his/her employees. Shared Google Drives were created for each firm to facilitate the sharing of resources between firm members.

Within one tutorial alone, there were approximately six or seven firms composed of five to six employees each. Students remained in the same firm throughout the semester. Students in their first tutorial would name their firm and maintain a register of employees, as well as the sick leave of employees who failed to attend later tutorials. Students who were not allocated to a firm in the first tutorial, had to apply for a position in one of the existing tax firms in later tutorials by having a quick interview with the firms and explaining what the new student could bring to the firm as an employee. It is acknowledged that this can put pressure on students, however it adds to the professional context of the tutorials by providing an experience that attempts to simulate a work-related interview process.

The 'professional context' of students working in tax advisory firms was critical. It was important that the narrative in the tutorials centred on the students being 'professional tax advisors' working for an advisory firm who were seeking to not only identify the current application of the tax law to a client's situation, but also to formulate solutions moving forward. The role of the tutor as the 'boss' of the firm was to provide guidance and ensure that the advice delivered to the client was professional and correct. The construct of the firms was to provide for mastery and modelling as students themselves had the opportunity to practice, but also observe other firm members for social comparison. In addition, the firms were understood to increase students' knowledge of the profession, as well as wielding the potential to enhance their teams' skills by working with other employees (i.e. students) of their tax firm.

3 *Case Studies*

Tutorial questions were altered so that they became case studies which explicitly discussed a client's situation in terms of a current tax issue they experienced. This included explicit statements in the case studies referring to students as employees of a professional tax advisory firm who were advising a client. This continual contextualisation of being an employee of a professional tax advisory firm was seen as

making explicit the authentic nature of the case study, as well as how it then related to the theoretical course material that had been covered in the prior week's lecture. This was perceived to provide the opportunity to develop students understanding of the profession they were about to enter following graduation.

To provide a structure regarding how the firms should address their client's issues, firms were provided with a Professional Advice Checklist that outlined an extended ILAC method (referred to as the '*ILAC ++ Method*'). Traditionally, the ILAC method focuses on identifying the Issue, the relevant Law that applies, Application of the law to the facts, and then coming to a preliminary Conclusion of how the law applies to the given circumstances (hence, 'ILAC'). In addition to this, the *ILAC ++ Method* required firms to also consider:

a. what further facts from the client would assist them in being more definitive with their conclusion;

b. some solutions that could be put forward to the client to try to improve their legal or practical outcome; and

c. recommendations to the client about what they should do in the future about this issue.

In this way the *ILAC ++ Method* was designed to provide a more professional context to the problem-solving skills that professional advisors would need to develop in their future careers. The relevance of the *ILAC ++ Method* to professional practice was discussed in the first tutorial.

Ultimately, the case studies were seen as central in giving students the opportunity to participate in Mastery experiences to practice their skills, as well as relevant insight into how professional advisors do not focus solely on clients' current problems but seek to make recommendations about future actions. Similarly, the *ILAC ++ Method* was seen as instrumental in providing a framework to develop students' problem-solving skills.

4 *Student Preparation*

It was critical that students came to tutorials with a draft solution prepared. To encourage students to do this, students were required to upload electronically onto the learning management system (Blackboard) their prepared answers by 10am of the relevant day of the tutorial. Of the ten tutorials uploaded, five were randomly selected for 'spot checks' which were marked up to 2 per cent per checked tutorial depending on the level of work the student had put into their attempt. These tutorial submissions were assessed on an individual basis and were not affected by the submissions of other firm members. This link to assessment provided students with the motivation to ensure that they prepared for their upcoming tutorials.

5 *Activity Structure*

The structure of these tutorials was largely broken into firm time, firm presentation and boss' summary. Each component will be discussed, in turn, below.

(e) Firm Time

At the beginning of the tutorial, there would be 'firm time' of approximately 20 minutes. Within this time, employees would have the opportunity to learn from each other as they considered their case study. During this time, employees would be able to compare and contrast their answers with each other: 'what did I get — what did you get?' Following this, students could then work together to decide what was the best advice for the client using the *ILAC ++ Method*. As part of this, firms not only had to discuss the current application of the tax law to the client's situation, but also to develop potential 'solutions' for the client to consider, as well as recommendations about what the client should do in the future regarding the issue. The case studies and open discussion concerned the 'client' and how, as professional tax advisers, the firm could assist them now and in the future. This firm interaction provided opportunities for mastery and modelling, in addition to facilitating communication, team and problem solving skills.

During this 'firm time', the boss (i.e. the tutor) would walk amongst the different firms to provide clarification and direction as to some of the issues that firms were struggling with. This was done to minimise the possibility of incorrect answers being presented to the class later in the tutorial. This interaction by the boss with the firms allowed for social persuasion, as the boss was able to give realistic encouragement about the answers being formulated, including acknowledging incorrect understanding but with ability to direct students to consider other aspects or to refine their understanding.

(f) Firm Presentation

After working together, one employee of each firm would present their recommendations to the client, the other firms and their boss (for approximately 5 to 10 minutes). Each firm was allocated different parts of the case study or different questions, to avoid repetition. In the event that two firms addressed the same case study, then a member from each firm would present together. During the semester, each member of a firm had at least one opportunity to present. The collaboration with firm members and affirmation from their boss during the firm time was designed to ease the potential stress associated with such presentations, as students should have been more confident about their answer being correct. Such feedback and supportive structure was hoped to assist students in supporting their physiological state in presenting. Additionally, there was no direct assessment weighting allocated to the presentation itself, easing student concern about lost marks due to a weak presentation. Moreover, presentations helped with mastery of the task, watching other firms present meant that there were opportunities for modelling and social persuasion, and seeing others succeed gave students realistic encouragement. In effect, presentations were performed to encourage the development of communication skills.

(g) Boss' Summary

During the firm presentations, the boss would interject to clarify points, or to tease out possible alternatives. Also, the boss would take the opportunity to congratulate employees on work well done. At the end of the firm presentations, the boss would deliver a short summary of the client's issues and what it meant. The boss' activities, in

this regard were seen as key in social persuasion, providing feedback and encouragement to firm members.

The aim of providing this narrative throughout the tutorials was to enable students to fill the role of professional advisors in training, and that the material they were learning was relevant to their future careers. It also aimed to provide students with context that their role as advisors is not just about identifying current issues, but to provide tangible solutions for their clients.

IV RESEARCH APPROACH

This Part outlines the research methodology adopted and briefly explores the demographics of the survey participants.

A *Methodology*

This study employed a longitudinal survey methodology to examine the potential impact of the firm on students. The survey instrument was administered at the start of the semester in the first lecture in an attempt to capture students prior to their extensive engagement with the course. The survey instrument was then re-administered at the end of the semester to gauge the level of student development.

The survey instrument had three parts, demographics, self-efficacy measures and then a part for students to write comments about their learning experience.

The measurement of self-efficacy in prior work has focused on task-specific as well as generalised self-efficacy.[74] General self-efficacy scales have demonstrated valid associations with initiation and persistence in behaviour.[75] In addition to this, it is useful to have task-specific items to try to better predict individual behaviour in terms of different skills. There is empirical support by Wang and Richarde that task-specific measures can better predict performance of cognitive tasks compared to a general self-efficacy scale.[76]

For the study, a 19-item measure of self-efficacy was adopted, comprising of both task-specific items and of generalised measures. Please refer to Table 2 below for the full set of items. The first five items of the questionnaire were adapted from Chen et al's general

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74 Rudolf J Bosscher and Johannes H Smit, 'Confirmatory Factor Analysis of the General Self-Efficacy Scale' (1998) 36(3) *Behaviour Research & Therapy* 339. Gilad Chen and Stan Gully, 'Specific Self-Efficacy, General Self-Efficacy, and Self-Esteem: Are They Distinguishable Constructs?' (Proceedings, Annual Meeting of the Academy of Management, 1997); Andrea K Kirk and David F Brown, 'Latent Constructs of Proximal and Distal Motivation Predicting Performance Under Maximum Test Conditions' (2003) 88(1) *Journal of Applied Psychology* 40.

75 Mark Sherer et al, 'The Self-Efficacy Scale: Construction and Validation' (1982) 51 *Psychological Reports* 663.

76 Alvin Y Wang and R Stephen Richarde, 'Global Versus Task-Specific Measures of Self-Efficacy' (1988) 38 *The Psychological Record* 533.

self-efficacy scale, which has been demonstrated to correlate more highly with several motivational variables including goal orientation and performance.[77]

In terms of task-specific items, we developed another fourteen items under the themes of 'Profession', 'Communication', 'Team' and 'Problem Solving'. The lead directive for each item was '*How confident are you in your ability to …*', and a 6-point Likert scale was provided to participants ranging from 0 = *Not confident at all* to 5 = *Very confident*.

B *Demographics*

A total of 58 students were surveyed, with 30 at the beginning of the semester and then 28 at end of the semester, which represented a response rate of greater than 50 per cent of those students enrolled in the course: please see Table 1 below. Just over half the students surveyed were female (55 per cent), and the vast majority were domestic students (88 per cent). Around two-thirds (67 per cent) were the '*first in family*' as their parents had not graduated from university, with less than half (49 per cent) having less than three months PWE. While the survey was completed by students anonymously, there was some comfort for the comparison of student demographics at the beginning and end of the semester, as most characteristics were likely to remain consistent, and it was essentially the same cohort of students.

[77] Gilad Chen, Stanley M Gully and Dov Eden, 'Validation of a New General Self-Efficacy Scale' (2001) 4(1) *Organizational Research Methods* 62.

TABLE 1: DEMOGRAPHICS

ATTRIBUTE		BEGINNING OF SEMESTER (N = 30) (N = 51)	END OF SEMESTER (N = 28) (N = 51)	TOTAL (N = 58) (N = 102)
Gender	Male	14 (47%)	12 (43%)	26 (45%)
	Female	16 (53%)	16 (57%)	32 (55%)
Age	< 20 years	0 (0%)	2 (7%)	2 (3%)
	20 – 30 years	22 (74%)	20 (71%)	44 (76%)
	31 – 40 years	4 (13%)	4 (14%)	8 (14%)
	> 40 years	4 (13%)	2 (7%)	6 (10%)
Nationality	Domestic	26 (90%)	25 (89%)	51 (88%)
	International	3 (10%)	3 (11%)	6 (12%)
First in family (parent university graduate)	Yes	19 (63%)	20 (71%)	39 (67%)
	No	11 (37%)	8 (29%)	19 (33%)
Professional work experience (> 500 hrs / 3 mths)	Yes	15 (52%)	14 (50%)	29 (51%)
	No	14 (48%)	14 (50%)	28 (49%)

V RESULTS

In terms of perceived improvement in self-efficacy, Table 2 below provides a detailed outline of the total responses to the 19 self-efficacy dimensions at the beginning and then the end of semester, including the percentage change experienced over the semester. Overall, this demonstrates that there was a 6 per cent growth in self-efficacy, in terms of the aggregated dimensions during the semester, with the top three areas of growth being: '*to better manage time*' (14 per cent growth); '*to know what is expected of you as a professional advisor*' (13 per cent growth); and '*to successfully overcome many challenges*' (12 per cent growth).

TABLE 2: SELF-EFFICACY (ALL STUDENTS)

HOW "CONFIDENT" ARE YOU IN YOUR ABILITY TO …	BEGINNING OF SEMESTER (N = 30) (N=51)	END OF SEMESTER (N = 28) (N=51)	CHANGE OVER SEMESTER
GENERALISED			
… accomplish difficult tasks when faced with them.	3.69	3.68	0%
… to complete most tasks very well compared to other people.	3.27	3.39	4%
… to perform quite well even when things are tough.	3.38	3.68	9%
… to successfully overcome many challenges.	3.62	4.04	12%
… to better manage time.	3.35	3.82	14%
PROFESSION			
… progress through the ranks in a new place of employment.	3.38	3.52	4%
… achieve most career goals that you have been able to set for yourself.	3.88	3.75	-3%
… begin a career in the Degree you are studying.	3.42	3.48	2%
… to know what is expected of you as a professional advisor.	3.15	3.57	13%
COMMUNICATION			
… to communicate with clients and colleagues in an effective manner	3.54	3.71	5%
… to be clear when presenting your ideas.	3.19	3.43	7%
… to be confident and calm when making presentations to colleagues	3.00	3.29	10%
TEAM			
… to coordinate tasks within your work group.	3.50	3.64	4%
… to manage conflict among group members.	3.31	3.44	4%
… to contribute ideas for a team result.	3.73	3.85	3%
PROBLEM SOLVING			
… to research tax issues confidently.	3.04	3.21	6%
… to analyse topics to identify what information you need to produce a good result.	3.50	3.68	5%
… to efficiently access and systematically search electronic information and reference sources (e.g. library catalogues, databases).	3.35	3.57	7%
… to critically evaluate the relevance, reliability and authority of information you find so you know what to use and what to discard.	3.42	3.71	9%
OVERALL AVERAGE	**3.41**	**3.60**	**6%**

To consider the possible effect of PWE, Table 3 (below) details those students with low PWE (taken as less than 500 hours/3 months experience in a PWE) compared to those with high PWE. What becomes evident immediately is that, on average, students with low

PWE started the semester with lower overall self-efficacy (2.98) compared to those with high PWE (3.63), a 22 per cent difference. While both cohorts increased their self-efficacy during the semester, those students with low PWE had the greatest growth (13 per cent), compared to high PWE students (6 per cent). This meant that by the end of the semester, while the low PWE students were not as confident as the high PWE students, the difference between them had decreased to 14 per cent. This preliminary result could illustrate the importance of simulated WIL experience for low PWE students in enhancing their self-efficacy, so they are more confident when entering the workplace.

TABLE 3: SELF-EFFICACY: PROFESSIONAL WORK EXPERIENCE (LOW VS HIGH)

HOW "CONFIDENT" ARE YOU IN YOUR ABILITY TO …	LOW PROFESSIONAL WORK EXPERIENCE (PWE)*			HIGH PROFESSIONAL WORK EXPERIENCE (PWE)*		
	BEGINNING OF SEMESTER (N = 14) (N=51)	END OF SEMESTER (N = 14) (N=51)	CHANGE OVER SEMESTER	BEGINNING OF SEMESTER (N = 16) (N=51)	END OF SEMESTER (N = 14) (N=51)	CHANGE OVER SEMESTER
GENERALISED						
… accomplish difficult tasks when faced with them.	3.21	3.29	2%	3.75	4.07	9%
… to complete most tasks very well compared to other people.	3.07	3.00	-2%	3.25	3.79	16%
… to perform quite well even when things are tough.	3.29	3.43	4%	3.31	3.93	19%
… to successfully overcome many challenges.	3.29	4.00	22%	3.63	4.07	12%
… to better manage time.	3.38	3.79	12%	3.56	3.86	8%
PROFESSION						
… progress through the ranks in a new place of employment.	2.79	3.07	10%	3.75	4.00	7%
… achieve most career goals that you have been able to set for yourself.	3.21	3.36	4%	4.19	4.14	-1%
… begin a career in the Degree you are studying.	2.57	2.93	14%	3.94	4.08	4%
… to know what is expected of you as a professional advisor.	2.64	3.36	27%	3.69	3.79	3%
COMMUNICATION						
… to communicate with clients and colleagues in an effective manner	3.07	3.57	16%	3.75	3.86	3%
… to be clear when presenting your ideas.	2.79	3.36	21%	3.38	3.50	4%
… to be confident and calm when making presentations to colleagues	2.50	3.21	29%	3.25	3.36	3%

TEAM						
… to coordinate tasks within your work group.	2.93	3.36	15%	3.75	3.93	5%
… to manage conflict among group members.	2.71	3.21	18%	3.63	3.69	2%
… to contribute ideas for a team result.	3.14	3.50	11%	4.00	4.23	6%
PROBLEM SOLVING						
… to research tax issues confidently.	2.64	3.14	19%	3.38	3.29	-3%
… to analyse topics to identify what information you need to produce a good result.	3.07	3.43	12%	3.69	3.93	7%
… to efficiently access and systematically search electronic information and reference sources (e.g., library catalogues, databases).	3.14	3.57	14%	3.50	3.57	2%
… to critically evaluate the relevance, reliability and authority of information you find so you know what to use and what to discard.	3.14	3.57	14%	3.56	3.86	8%
OVERALL AVERAGE	**2.98**	**3.38**	**13%**	**3.63**	**3.84**	**6%**

* High professional work experience ('PWE') was categorised as those students with greater than 500 hours (3 months) work experience in a professional firm. Note: students may have had other non-professional work experience.

Below is a discussion concerning each category of the self-efficacy dimensions measured, with a discussion of the overall results for the aggregated student cohort as well as a comparison of low and high PWE students.

A *Generalised*

For the aggregated student result, in terms of the five generalised dimensions of self-efficacy there was an increase in all, except for '*accomplish difficult tasks when faced with them*' which essentially remained unchanged for the semester (3.69 *c.f.* 3.68: see Table 2). The largest growth concerned '*to better manage time*' (14 per cent growth) and '*successfully overcome many challenges*' (12 per cent growth) which, while pleasing, may relate to other experiences of the students occurring outside the class as they come towards the end of their degree. Nevertheless, this would tend to suggest that students' self-efficacy has improved over the semester and it is pleasing that the students' top efficacy item at the end of the semester was '*successfully overcome many challenges*' (4.04), which could be important for students when they have to face potential challenges in their future careers.

When looking at the results depending upon the students' PWE (Table 3), the generalised self-efficacy dimensions for low PWE students are lower at the start of the semester than the high PWE students. For low PWE students, the areas of biggest growth over the semester were '*to successfully overcome many challenges*' (22 per cent) and '*to better manage time*' (12 per cent). Whereas for high PWE students, their largest dimensions for growth were '*to perform quite well even when things are tough*' (19 per cent) followed by '*to complete most tasks very well compared to other people*' (16 per cent). It could be that the interaction within the firms with the low PWE students, meant that the high PWE students saw how others may have struggled with the professional context of the case studies. Indeed, low PWE students saw a slight decrease (2 per cent) in this dimension, as they may have compared themselves to the high PWE students in their firms. This could demonstrate a re-calibration by students of their ability compared to other students, which in some respects is a positive outcome as they may have a more realistic understanding of their own abilities, and then know what they need to concentrate on to improve. Also, it could demonstrate the potential for high PWE students to assist low PWE students in an authentic learning environment.

B *Profession*

Of the four dimensions directed at the 'Profession', the greatest aggregated growth of 13 per cent was in terms of '*to know what is expected of you as a professional advisor*', which is interesting given that, at the beginning of the semester, this dimension had the third lowest rating (3.15) and by the end of the semester, it had grown to eighth highest rating (3.57). It is suggested that this growth is pleasing, as it appears that in aggregate, students have a better sense of what professional advisors do which should assist in their transition to the workplace. For low PWE students, this dimension was the third lowest at the beginning of the semester (2.64) but experienced one of the greatest growths of 27 per cent, ending at 3.36 at the end of the semester. For high PWE students, it was one of the top five dimensions at the beginning of the semester (3.69) and experienced only a

modest growth of 3 per cent during the semester to end at 3.79. This would appear to support the value of simulated WIL, particularly for low PWE students. Naturally, this could be attributed to the skills of the tutor (i.e. the boss) in creating a good learning environment, and the maturing of the students as they progress through their degree. The student feedback in this regard is discussed in Part VI.

While in an aggregate sense, students had growth in self-efficacy for '*progress through the ranks in a new place of employment*' (4 per cent growth), their confidence to '*achieve most career goals that you have been able to set for yourself*' reduced (3 per cent decline). This difference may deal with the 'timeframe' that the dimensions are referring to, as '*progress through the ranks in a new place of employment*' appears to deal with an immediate timeframe, whereas '*achieve most career goals that you have been able to set for yourself*' appears to consider a longer timeframe. Alternatively, it may be a re-calibration of students' self-efficacy as at the beginning of the semester they may have been over-confident in terms of their career goals (it was ranked the highest of all dimensions at the beginning of the semester), and following their experience during the semester, they are not as confident in this regard.

When looking at the two cohorts separately, low PWE students' self-efficacy in terms of '*progress through the ranks in a new place of employment*' saw a 10 per cent growth from a very low initial rating (2.79). Whereas, for high PWE students there was a good growth of 7 per cent, with this dimension being in their top five at the end of the semester. The dimension which appeared to be least influenced during the semester was '*achieve most career goals that you have been able to set for yourself*', with high PWE students slightly decreasing (1 per cent decline), and for low PWE a modest growth of 4 per cent. It may be that with a simulated WIL experience, its ability to affect students' self-efficacy — in terms of career goals — is limited.

C *Communication*

On an aggregate basis, it was pleasing to see all three dimensions of communication increasing during the semester, with growth between 5 per cent and 10 per cent, and the biggest growth in '*to be confident and calm when making presentations to colleagues*', which at the beginning of the semester was the least confident dimension (3.00). This would suggest that students have improved their physiological state when presenting, which can be a large inhibitor to effective communication:

> The presentations have made me more confident with presenting in front of groups. Also helped with my written and oral skills. (Low PWE Student)

Notwithstanding, it should be acknowledged that at the end of the semester, the communication dimensions still had some of the lowest ratings, which would indicate that there is still room for development in this area.

Clearly, for low PWE students they had lower ratings for their communication dimensions than high PWE students, although even for high PWE students two of the communication dimensions ('*to be clear when presenting your ideas*' and '*to be confident and calm when making presentations to colleagues*') were in their lowest five-dimension rankings. This would suggest that even for high PWE students, there would be benefit in

activities to improve their communication skills, although they considered themselves more confident in '*to communicate with clients and colleagues in an effective manner*' (3.86). Similar to high PWE students, the communication dimensions for low PWE students were some of the lowest ratings, but overall, they experienced some of their greatest growth with 16 per cent to 29 per cent increases. This would suggest that the activities undertaken in the firms did, in some ways, improve students' confidence with their communication skills.

D *Team*

In terms of the team dimensions, for the aggregated results all three dimensions demonstrated a similar modest growth of approximately 3 per cent to 4 per cent, for '*coordinating tasks*', '*managing conflict*' and '*contributing ideas*'. While not as strong as growth in other areas, it remains a favourable outcome and suggests some gain in confidence for students in this important area of working with others:

> Working in a group is better for critical thinking (Low PWE student)

Of course, teamwork can always be problematic in terms of member contribution:

> The group 'firms' tended to produce the same problems all group work encounters and that is some students do more and others rely on those students to produce the work. (Low PWE student)

For both low and high PWE students the dimension '*to manage conflict among group members*' had some of the lowest rankings (although for high PWE students the rating was higher: 3.63 *c.f*. 2.71 at the start of the semester). However, low PWE students experienced double figure growth over the semester on all three dimensions (11 per cent to 18 per cent growth), with the high PWE students' growth more modest (2 per cent to 6 per cent). For high PWE students, their highest rating over all 19 dimensions at the end of the semester was '*to contribute ideas for a team result*' (4.23), which could reflect a positive experience they had in firm discussions resolving client issues. However, this contribution by high PWE students could have been perceived by others as them dominating firm discussions, intimidating other less experienced or confident students:

> I was put into a group with 3 other people who knew so much more than I did about the subject and this discouraged me from engaging in group activities. (Low PWE student)

E *Problem Solving*

For the four dimensions that measured problem solving, it was pleasing to see that in aggregate a 9 per cent growth occurred in '*to critically evaluate the relevance, reliability and authority of information you find so you know what to use and what to discard*', which can be a key attribute of a professional advisor. There was also strong growth in the other problem-solving dimensions, although overall students' confidence to '*research tax issues*' was the lowest ranking dimension at the end of the semester (3.21), suggesting the need for future WIL activities to focus on this. Such research skills may have been enhanced if the boss was able to demonstrate various research techniques during firm time more often (such as use of relevant tax databases and the Tax Office's website). Hence, the

importance in allowing more time by scheduling a two-hour tutorial than the normal one hour.

For low PWE students, the self-efficacy dimensions in problem solving had some of their highest ratings both at the start and end of the semester (three out of the four dimensions were in the top five both at the beginning and end of semester). This could suggest that their university education is helping these students to establish a problem-solving framework for analysis. Nevertheless, low PWE students did experience substantial growth of 12 per cent to 19 per cent in the problem-solving dimensions, suggesting the firm case studies were useful in improving their confidence in this regard. For high PWE students, some of the problem-solving dimensions were their lowest rated at the beginning of the semester: '*to research tax issues confidently*', '*to efficiently access and systematically search electronic information and reference sources (e.g. library catalogues, databases)*' and '*to critically evaluate the relevance, reliability and authority of information you find so you know what to use and what to discard*'. While the first two of these were still rated lowly at the end of the semester, the dimensions of '*to critically evaluate …*' saw an 8 per cent growth to be in the top ten ratings at the end of the semester:

> The subject helps to stimulate critical thinking and engagement within the syllabus (High PWE student)

VI Overall Observations and Recommendations

In aggregate the students' self-efficacy appears to have increased through the firm case study, with 13 per cent growth in aggregate in students' confidence in '*to know what is expected of you as a professional advisor*'. This would appear to suggest that the design of the 'firms' and the case studies combined with the *ILAC++ Method* has enabled students to gain a better idea of what is expected as a professional advisor. It should be recalled that this dimension had one of the lowest rankings at the beginning of the semester (third lowest of 19). It is suggested that students' growth over the semester should hold them in good stead as they transition to the workplace, and is supported by a number of student quotes:

> Overall the format of the seminar was excellent and found it very useful in my learning (High PWE student)
>
> The interaction between Lecturer & the students made learning much easier. Open conversations with all students participating makes learning a lot easier. (High PWE student)
>
> Overall the seminar material and structures has benefited my current performance and will lead me in the right path for future endeavours. (High PWE student)

Additionally, generalised self-efficacy on the whole has improved, which is a pleasing outcome if confidence is an indicator of future activity. Furthermore, in terms of communication it is good to see a substantial growth in all three dimensions given the importance of this generic skill for advisors.

However, when the results are distinguished between those students with low and high PWE a number of factors become evident. Firstly, for those students with low PWE who are clearly less confident (2.98 *c.f.* 3.63) at the beginning of the semester, the simulated

WIL case study experience meant they largely had the opportunity to develop their confidence in all but one of the dimensions measured to 3.38, a 13 per cent growth. While for high PWE students their growth over the semester was not as substantial (6 per cent), their confidence appeared to be improved (and maybe refined) — especially their generalised self-efficacy growth. Overall, it is suggested that this demonstrates how important simulated WIL experiences can be for low PWE students, although there are still benefits for high PWE students.

The top five dimensions for growth over the semester for low PWE students were: '*to be confident and calm when making presentations to colleagues*' (29 per cent); '*to know what is expected of you as a professional advisor*' (27 per cent); '*to successfully overcome many challenges*' (22 per cent), '*to be clear when presenting your ideas*' (21 per cent) and '*to research tax issues confidently*' (19 per cent). For high PWE students, it was the generalised self-efficacy dimensions that saw the greatest growth over the semester with 8 per cent to 19 per cent growth (note that the task-specific dimension of '*to critically evaluate the relevance, reliability and authority of information you find so you know what to use and what to discard*' also experienced 8 per cent growth). This would suggest that for high PWE students it helps them more generally in terms of confidence, which in part may relate to their interaction with their student colleagues (including low PWE students) in the firm case studies. Consequently, it is argued that there are benefits for both low and high PWE students with simulated WIL activities, although low PWE are likely to experience the greatest growth.

These results demonstrate how important it is to 'get to know your students' at the beginning of the semester, particularly to try to ascertain which students have high and low PWE. It is submitted that this distinction is important as it may influence student interaction with the learning environment, each other and the simulated WIL activities, as their levels of self-efficacy (confidence) could be quite different. Moreover, this background knowledge concerning students may highlight to the educator the different skills and knowledge students may bring to the class, and how these skills might be drawn upon during the semester. For example, educators could make more opportunity of those high PWE students and get them to provide their own insights from their professional experience, and what that means to be an advisor and/or with respect to the theory taught.

Relevantly, the differences in PWE will need to be managed by the educator, which relates to both low and high PWE students. For example, given that low PWE students could have lower self-efficacy, they could find the simulated WIL experience particularly confronting. It is essential to ensure that they are supported, especially in the early stages of the semesters until they become comfortable with the learning environment. This could mean low PWE students need more scaffolded resources (and examples) to get a better idea of how to approach simulated WIL activities. As it is, it is likely that students with low PWE will find such simulated WIL activities more difficult,[1] and could take them

[1] Cull (n 21).

more time to complete. For example, a quote from a low PWE student demonstrated that they spent a lot of time on the simulated WIL activity in the seminars:

> Allocate more marks to seminars as they are time consuming. (Low PWE student)

While, in terms of communication it is good to see that there was a substantial growth in all three dimensions, but a particular area of concern can be low PWE students' self-efficacy in terms of communication. The importance of creating a safe environment to practice communication skills, as well as the scaffolding, is important. Although for both low and high PWE students, communication skills had one of the lowest rankings so support to facilitate growth for both cohorts is essential.

Additionally, the mix of low and high PWE students in the tax firms may need to be managed, as this mixture of experience could allow for peer assisted learning, especially in a professionalised context. However, educators may need to ensure that the high PWE students do not dominate the discussions, as they are likely to have higher levels of self-efficacy than low PWE students. It should be recalled that the highest self-efficacy dimension for high PWE students at the end of the semester was '*to contribute ideas for a team result*', whereas for low PWE students the one self-efficacy measure that decreased during the semester was '*to complete most tasks very well compared to other people*'. This could demonstrate that after their experience in working in the simulated 'firm', low PWE students could see how their experience lacked compared to those students with high PWE. In this sense, it may be worthwhile to change the membership of the firms midway through the semester, so students have the opportunity to meet others and obtain a greater sense for the variety of skills and abilities that exist.

Given the nature for more university teaching progressing to an online environment, particularly with the advent of Covid-19, it needs to be considered whether this authentic 'professional context' could be facilitated in an online learning environment. For example, in an online delivery mode, each firm could meet and discuss their client in 'break out' rooms,' prior to coming together to discuss their client. The online 'break out rooms' enables the boss (i.e. the tutor) to visit and assist in the firm's discussion. There is the potential for students to record their firm's presentation online, demonstrating the firm's approach in addressing the client's issues. The recordings could then be played and reviewed by the class. Additionally, the boss (i.e. the tutor) could provide pre-recorded briefings on the clients' circumstances that the firm may need to consider in their discussions. Furthermore, the online recorded firm's presentation could be part of the students' overall assessment.

A *Limitations and Future Research*

The findings of this study should be viewed in light of several limitations, including the preliminary nature of the evidence, its case study nature in terms of its external validity, and the short-time frame of the analysis. One of the limitations is that students have 'self-reported' their perceived levels of self-efficacy, which can be problematic and, at times, inaccurate. However, their interaction and feedback over the semester should have improved the accuracy of their perceptions given that they were given feedback continuously through the firm experience.

For high PWE students, part of their growth for the semester in self-efficacy could be from their learning in the work environment. Nevertheless, it is suggested that the interaction with other firm members, and the ability to professionally contextualised the material being learnt, could have provided the framework for growth in self-efficacy.

Another limitation to this study was the measure of high and low PWE as specified in the survey document as '*> 500 hours/3months*' which may have been too broad. The measure of (approximately) three months professional work experience was utilised as it was considered that this is a substantial amount of time for a student to be immersed in a professional work environment. Instead, it may be useful to have different brackets of prior professional work experience, such as: 0 hours; > 0 hours but < 85 hours/2 weeks; > 85 hours/2 weeks but < 500 hours/3 months; and > 500 hours/3 months. These different brackets of work experience could elicit different results for the different cohorts of PWE students.

Future research could consider the experience of the students once they commence graduate employment and request reflections on their firm case study experience in tutorials and whether this firm case study experience aided or hindered them in their transition to the workplace. Future research could also examine and contrast whether a similar experience (and growth) is experienced by students when the course is delivered online compared to on-campus.

VII CONCLUDING REMARKS

Academics teach increasingly diverse cohorts of students, which can make it extremely challenging when designing curriculum as students come to class with different backgrounds, different knowledge, different skills and different levels of confidence (self-efficacy). Educators need to be aware of this diversity as it can influence the effectiveness of the teaching and learning strategies implemented.

One area of diversity amongst students is the extent that students have had prior PWE in the area they are studying. While for postgraduate students it may be more likely that they have relevant PWE, for undergraduate students this may not be the case.

Simulated WIL can be an important curriculum design to try to capture some of the great learning that can occur when students have experience in the workplace. Part of this is that simulated WIL can increase students' self-efficacy, which can be a critical attribute to possess as students face the daunting task of starting their chosen profession. This article explored how a simulated WIL case study involving problem solving, experiential and cooperative learning was developed to aid the development of students' self-efficacy. Through the establishment of professional tax firms in tutorials and students being appointed to professional advisory firms, a simulated WIL environment was established. Students were treated as employees working on client case studies each week, with their boss (the tutor) mentoring them as they developed their tax advice. It was thought that such a simulated WIL experience may enhance students' self-efficacy and their professional awareness. The results demonstrate that students with little prior PWE started the semester with lower self-efficacy compared to their student colleagues with high PWE. While in aggregate there was growth in self-efficacy for both cohorts, low PWE

students experienced the greatest increase in self-efficacy. This demonstrates how important simulated WIL can be for students with low PWE, as it provides them with a better understanding as to what may be involved in their future working career, as well as aids in their self-efficacy development.

Notwithstanding, this study also demonstrates how educators need to be cognisant of their students' background, as more resources may need to be scaffolded to ensure there are experiences to aid the development of self-efficacy, such as mastery, modelling, social persuasion and judgment of own psychological states.

Overall, if self-efficacy is an indicator of future activity and confidence to approach their careers, then other educators are encouraged to consider how their courses could be designed to not only improve students' technical knowledge, but also to provide for opportunities for simulated WIL activities. These opportunities can provide students with an enhanced appreciation of their future professional careers, as well as the opportunity to improve their self-efficacy. With greater self-efficacy and professional identity, students should be better placed to face the challenges that lie ahead in their future careers.

REFERENCES

A *Articles/Books/Reports*

Adler, Ralph W and Markus J Milne, 'Improving the Quality of Accounting Students' Learning Through Action-Oriented Learning Tasks' (1997) 6(3) *Accounting Education* 191

Ahadiat, Nas and Rose M Martin, 'Attributes, Preparations and Skills Accounting Professionals Seek in College Graduates for Entry-Level Positions vs. Promotion' (2015) 8(1) *Journal of Business and Accounting* 179

Albrecht, W Steve and Robert J Sack, *Accounting Education: Charting the Course through a Perilous Future* (American Accounting Association, 2000)

Anderson, Don, Richard Johnson and Lawrence Saha, *Changes in Academic Work: Implications for Universities of the Changing Age Distribution and Work Roles of Academic Staff* (Commonwealth of Australia, 2002)

Bandura, Albert, 'Self-Efficacy Mechanism in Human Agency' (1982) 37(2) *American Psychologist* 122, 122

Bandura, Albert, *Self-Efficacy: The Exercise of Control* (W H Freeman, 1997)

Albert Bandura, 'Self-Efficacy: Toward a Unifying Theory of Behavioral Change' (1977) 84(2) *Psychological Review* 191

Bayerlein, Leopold and Mel Timpson, 'Do Accredited Undergraduate Accounting Programmes in Australia Meet the Needs and Expectations of the Accounting Profession?' (2017) 59(3) *Education + Training* 305

Bishop, Daniel, 'Context, Agency and Professional Workplace Learning: Trainee Accountants in Large and Small Practices' (2017) 59(5) *Education + Training* 516

Bosscher, Rudolf J and Johannes H Smit, 'Confirmatory Factor Analysis of the General Self-Efficacy Scale' (1998) 36(3) *Behaviour Research & Therapy* 339

Boud, David and Nancy Falchikov, 'The Role of Assessment in Preparing for Lifelong Learning: Problem and Challenges' in Anton Havnes and Liz McDowell (eds), *Balancing Dilemmas in Assessment and Learning in Contemporary Education* (Routledge, 2008)

Brimble, Mark, Craig Cameron, Brett Freudenberg, Campbell Fraser and Kirsten MacDonald, 'Collaborating with Industry to Develop Financial Planning Education' (2012) 6(4) *Australasian Accounting Business and Finance Journal* 79

Bui, Binh and Brenda Porter, 'The Expectation-Performance Gap in Accounting Education: An Exploratory Study' (2010) 19(1–2) *Accounting Education: An International Journal* 23

Chaplin, Sally, 'Accounting Education and the Prerequisite Skills of Accounting Graduates: Are Accounting Firms' Moving the Boundaries?' (2017) 27(1) *Australian Accounting Review* 61

Chartered Accountants Australia and New Zealand ('CAANZ'), *The Future of Talent: Opportunities Unlimited* (Report, CAANZ, November 2017)

Chen, Gilad, Stanley M Gully and Dov Eden, 'Validation of a New General Self-Efficacy Scale' (2001) 4(1) *Organizational Research Methods* 62

Chowdhury, Sanjib, Megan Lee Endres and Thomas W Lanis, 'Preparing Students for Success in Team Work Environments: The Importance of Building Confidence' (2002) 14(3) *Journal of Managerial Issues* 346

Coll, Richard K, Mark Lay and Karsten E Zegwaard, 'The Influence of Cooperative Education on Student Self-Efficacy Towards Practical Science Skills' (2001) 36(2) *Journal of Cooperative Education* 58

Cull, Michelle, 'Learning to Produce a Financial Plan: Student Perceptions of Integrating Knowledge and Skills' (2019) 5(1) *Financial Planning Research Journal* 29

De la Harpe, Barbara and Christina David, 'Major Influences on the Teaching and Assessment of Graduate Attributes' (2012) 31(4) *Higher Education Research & Development* 493

Fletcher, Joyce K, 'Self Esteem and Cooperative Education: A Theoretical Framework' (1990) 26(3) *Journal of Cooperative Education* 41

Freeman, Mark and Paul Wells, 'Reducing the Expectation Gap: Using Successful Early Career Graduates to Identify the Capabilities that Count' in Elaine Evans, Roger Burritt and James Guthrie (eds), *Future Proofing the Profession: Preparing Business Leaders and Finance Professionals for 2025* (Chartered Accountants Australia and New Zealand, 2015)

Freudenberg, Brett, Mark Brimble, Victoria Vyvyan and David Corby, 'A Penny for Your Thoughts: Can Participation in a Student-Industry Conference Improve Students' Presentation Self-Efficacy and More?' (2008) 15(5) *The International Journal of Learning* 188

Freudenberg, Brett, Mark Brimble, Craig Cameron and Kirsten MacDonald, 'I Am What I Am: Am I? The Development of Self-Efficacy Through Work Integrated Learning' (2013) 19(3) *The International Journal of Learning* 177

Freudenberg, Brett, Craig Cameron and Mark Brimble, 'The Importance of Self: Developing Students' Self Efficacy Through Work Integrated Learning' (2010) 17(10) *The International Journal of Learning* 479

Gardner, Philip D and Wen-Ying Liu, 'Prepared to Perform? Employers Rate Work Force Readiness of New Grads' (1997) 57(3) *Journal of Career Planning and Employment* 52

Gist, Marilyn and Terence Mitchell, 'Self-Efficacy: A Theoretical Analysis of its Determinants and Malleability' (1992) 17(2) *Academy of Management Review* 183

Haddara, Mahmoud and Heather Skanes, 'A Reflection on Cooperative Education: From Experience to Experiential Learning' 8(1) *Asia-Pacific Journal of Cooperative Education* 67

Hayes, Sharon, Brett Freudenberg and Deborah Delaney, 'Role of Tax Knowledge and Skills: What are the Graduate Skills Required by Small to Medium Accounting Firms' (2018) 13(1) *Journal of Australasian Tax Teachers Association* 152

Howieson, Bryan, Phil Hancock, Naomi Segal, Marie Kavanagh, Irene Tempone and Jenny Kent, 'Who Should Teach What? Australian Perceptions of the Roles of Universities and Practice in the Education of Professional Accountants' (2014) 32 *Journal of Accounting Education* 259

Ibrahim, Nabil and John Angelidis, 'The Relative Importance of Ethics as a Selection Criterion for Entry-Level Public Accountants: Does Gender Make a Difference?' (2009) 85(1) *Journal of Business Ethics* 49

Jackling, Beverley and Kim Watty, 'Generic Skills' (2010) 19(1-2) *Accounting Education* 1

Jackling, Beverley and Paul De Lange, 'Do Accounting Graduates' Skills Meet the Expectations of Employers? A Matter of Convergence or Divergence' (2009) 18(4–5) *Accounting Education* 369

Jackson, Denise, 'Re-Conceptualising Graduate Employability: The Importance of Pre-Professional Identity' (2016) 35(5) *Higher Education Research & Development* 925

Jones, Rob, 'Bridging the Gap: Engaging in Scholarship with Accountancy Employers to Enhance Understanding of Skills Development and Employability' (2014) 23(6) *Accounting Education* 527

Kavanagh, Marie and Lyndal Drennan, 'What Skills and Attributes Does an Accounting Graduate Need?' (2008) 48 *Accounting and Finance* 279

Kirk, Andrea K and David F Brown, 'Latent Constructs of Proximal and Distal Motivation Predicting Performance Under Maximum Test Conditions' (2003) 88(1) *Journal of Applied Psychology* 40

Kolb, David, Stuart Lublin, Juliann Spoth and Richard Baker, 'Strategic Management Development: Using Experiential Learning Theory to Assess and Develop Managerial Competencies' (1986) 5(3) *Journal of Management Development* 13

Low, Mary, Vida Botes, David Dela Rue and Jackie Allen, 'Accounting Employers' Expectations – The Ideal Accounting Graduates' (2016) 10(1) *e-Journal of Business Education & Scholarship of Teaching* 36

McKenzie, Kirsten and Rober Schweitzer, 'Who Succeeds at University? Factors predicting Academic Performance in First Year Australian University Students' (2001) 20(1) *Higher Education Research and Development* 21

Newstead, Stephen E, Arlene Franklyn-Stokes and Penny Armstead, 'Individual Differences in Student Cheating' (1996) 88(2) *Journal of Educational Psychology* 229

Oliver, Beverley, 'Redefining Graduate Employability and Work-Integrated Learning: Proposals for Effective Higher Education in Disrupted Economies' (2015) 6(1) *Journal of Teaching and Learning for Graduate Employability* 56

Pan, Peipei and Hector Perera, 'Market Relevance of University Accounting Programs: Evidence from Australia' (2012) 36 *Accounting Forum* 91

Polidano, Cain and Rezida Zakirova, *Outcomes from Combining Work and Tertiary Study* (Report, Melbourne Institute of Applied Economic and Social Research, 2011)

Precision Consultancy, *Graduate Employability Skills*: *Prepared for Business, Industry and Higher Education Collaboration Council* (Report, Precision Consultancy, August 2007)

Quinn, Petrina and Brian Hemmings, 'The Role of Personal and Environmental Factors in Predicting Persistence and Satisfaction in Tertiary Agricultural Study' (Conference Paper, Australian Association for Research in Education Conference, Global Issues and Local Effects: The Challenge for Educational Research, 27 November–2 Dececember 1999).

Rebele, James and E Kent St Pierre, 'Stagnation in Accounting Education Research' (2015) 33(2) *Journal of Accounting Education* 128

Reinsch (Jnr), Lamar and Annette N Shelby, 'Communication Challenges and Needs: Perceptions of MBA Students' (1996) 59(1) *Business Communication Quarterly* 36

Satchakova, Lioubov and Alex Taube, 'The Role of Self-Efficacy on Accounting Near-Graduate Students' Employment Outcomes' (2020) 10(2) *International Journal of Academic Research in Business and Social Sciences* 814

Sawyer, Adrian J, Stephen R Tomlinson and Andrew J Maples, 'Developing Essential Skills Through Case Study Scenarios' (2000) 18(3) *Journal of Accounting Education* 257

Sherer, Mark, James E Maddux, Blaise Mercandante, Steven Prentice-Dunn, Beth Jacobs and Ronald W Rogers, 'The Self-Efficacy Scale: Construction and Validation' (1982) 51 *Psychological Reports* 663

Sin, Samantha and Nicholas McGuigan, 'Fit for Purpose: A Framework for Developing and Assessing Complex Graduate Attributes in a Changing Higher Education Environment' (2013) 22(6) *Accounting Education* 522

Sithole, Seedwell T M, 'Quality in Accounting Graduates: Employer Expectations of the Graduate Skills in the Bachelor of Accounting Degree' (2015) 11(22) *European Scientific Journal* 165

Spanjaard, Daniela, Tim Hall and Nicole Stegemann, 'Experiential Learning: Helping Students to Become "Career Ready"' (2018) 26 *Australasian Marketing Journal* 163

Subramaniam, Nava and Brett Freudenberg, 'Preparing Accounting Students for Success in the Professional Environment: Enhancing Self-Efficacy Through a Work Integrated Learning Program' (2007) 8(1) *Asia-Pacific Journal of Cooperative Education* 7

Tang, Mei, Kathleen D Addison, Danielle LaSure-Bryant, Rhonda Norman, William O'Connell and Joseph A Stewart-Sickling, 'Factors that Influence Self-Efficacy of Counselling Students: An Exploratory Study' (2004) 44(1) *Counselor Education and Supervision* 70

Tempone, Irene, Marie Kavanagh, Naomi Segal and Phil Hancock, 'Desirable Generic Attributes for Accounting Graduates into the Twenty-First Century: The Views of Employers' (2012) 25(1) *Accounting Research Journal* 41

Trede, Franziska, 'Role of Work-Integrated Learning in Developing Professionalism and Professional Identity' (2012) 13(3) *Asia-Pacific Journal of Cooperative Education* 159

Tucker, Mary L and Anne M McCarthy, 'Presentation Self-Efficacy: Increasing Communication Skills Through Service-Learning' (2001) 13 (2) *Journal of Managerial Issues* 227

Wang, Alvin Y and R Stephen Richarde, 'Global Versus Task-Specific Measures of Self-Efficacy' (1988) 38 *The Psychological Record* 533

Wood, Robert and Albert Bandura, 'Social Cognitive Theory of Organizational Management' (1989) 14(3) *Academy of Management Review* 361

Yap, Christine, Suzanne Ryan and Jackie Yong, 'Challenges Facing Professional Accounting Education in a Commercialised Education Sector' (2014) 23 *Accounting Education* 562

B *Other*

Chen, Gilad and Stan Gully, 'Specific Self-Efficacy, General Self-Efficacy, and Self-Esteem: Are They Distinguishable Constructs?' (Proceedings, Annual Meeting of the Academy of Management, 1997)

Yorke, Mantz, 'Employability in Higher Education: What it is, what it is Not' (Series 1, The Higher Education Academy, 2006)

EXPLORING THE EFFECTIVENESS OF USING AN EXTENDED CASE STUDY IN THE TEACHING OF TAXATION

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ABSTRACT

Case studies have been widely used in accounting education. However, to date there has been limited use of case studies as a teaching tool in taxation. Conventionally taxation courses are taught through the presentation of individual topics. In fact, areas of taxation are interrelated and do not exist independently of one another. This study seeks to explore the effectiveness of using an extended case study in the teaching of a second-year taxation course at the University of Canterbury, New Zealand. An extended case study (based on a sole-trader business) was developed and implemented in the lectures of the taxation course over a 12-week semester. The effectiveness of the extended case study was measured in three ways using both quantitative and qualitative measures. First, a student survey questionnaire was conducted containing both Likert scale and short answer questions. Secondly, a quantitative analysis of students' test and examination results both before and after the introduction of the extended case study approach, was conducted. Thirdly, the lecturers reflected on the effectiveness of the extended case study. This study consequently finds that using an extended case study in the teaching of taxation achieved the aims of presenting realistic taxation scenarios, enhancing students' understanding of how tax relates to the real-world and illustrating interrelationships between taxation topics. The extended case study was also perceived to help in developing students' critical thinking and problem-solving skills. However, it was found that it was less effective in improving students' abilities to deal with uncertainty. In addition, the findings of this research also indicated that the effectiveness of the extended case study as a teaching tool could potentially be improved through the more careful and consistent integration of the extended case study in the taxation course in the future.

Keywords: extended case study, student development and understanding, taxation education

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I INTRODUCTION

Case studies have been widely used in education, including accounting education, for many years.[1] The case study approach is claimed to deliver learning objectives such as the development of analytical, judgmental and other transferable (or generic) skills.[2] It has been claimed that transferable skills — such as those of communication, interpersonal relations, self-management, creativity, decision-making and problem-solving — are unlikely to be developed by traditional teaching methods drawing heavily on lecturing.[3] Boyce et al further argue that a significant benefit of the case study method is that, by presenting technical and theoretical issues in a practical context, the adoption of this approach can contribute to depth of understanding by fostering an active approach to learning.[4] To encourage active learning, emphasis has been placed on the importance of 'forging links between theoretical and practical aspects of the subject.'[5] Case studies provide this link in that, when introduced effectively into an accounting syllabus, they 'rehearse [students] in the professional or scholarly skills of their field, and [create] the opportunity to develop and express … understanding and point[s] of view in an environment that gives constructive feedback.'[6] Saunders and Machell state that case studies are an example of an explicit bridging activity which enables 'the higher education experience of students to be much more closely coupled to future employment requirements.'[7]

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1 The use of case studies is particularly extensive in management education. See William E Fulmer, 'Using Cases in Management Development Programmes' (1992) 11(3) *Journal of Management Development* 33; G Wines et al, *Using Case Studies in the Teaching of Accounting* (Australian Society of Certified Practising Accountants, Deakin University, 1994); Benson P Shapiro, *Hints for Case Teaching* (Harvard Business School Publishing Division, 1984). Cases have also historically been employed in the fields of medicine, law and business. Curtis Jay Bonk and G Stevenson Smith, 'Alternative Instructional Strategies for Creative and Critical Thought in the Accounting Curriculum' (1998) 16(2) *Journal of Accounting Education* 261, 279.

2 LC Mohrweis, 'Teaching Audit Planning and Risk Assessment: An Empirical Test of the Dermaceutics Instructional Resources' (1993) 8 *Issues in Accounting Education* 391; Trevor Hassall, Sarah Lewis and Mike Broadbent, 'Teaching and Learning Using Case Studies: A Teaching Note' (1998) 7(4) *Accounting Education: An International Journal* 325; Gaétan Breton, 'Some Empirical Evidence on the Superiority of the Problem-Based Learning (PBL) Method' (1999) 8(1) *Accounting Education: An International Journal* 1. See Part III of this paper for a further discussion of generic skills in accounting education.

3 Adrian J Sawyer, Stephen R Tomlinson and Andrew J Maples, 'Developing Essential Skills Through Case Study Scenarios' (2000) 18(3) *Journal of Accounting Education* 257, 257.

4 Gordon Boyce et al, 'Fostering Deep and Elaborative Learning and Generic (Soft) Skill Development: The Strategic Use of Case studies in Accounting Education' (2001) 10(1) *Accounting Education* 37.

5 The National Committee of Inquiry into Education, *Higher Education in the Learning Society: Report of the National Committee (Dearing Report)* (1997) [8.3].

6 Ibid.

7 Murray Saunders and Joan Machell, 'Understanding Emerging Trends in Higher Education Curricula and Work Connections' (2000) 13(3) *Higher Education Policy* 287, 297.

Numerous definitions of case studies exist.[8] The Harvard Business School — regarded as a pioneer of using case studies in education — defines a case study as follows:[9]

> 'a partial, historical, clinical study of a situation which has confronted a practising administrator or managerial group, presented in a narrative form that encourages student involvement. It provides data … essential to an analysis of a specific situation for the forming of alternative action programs, and for their implementation recognises the complexity and ambiguity of the practical world.'

Easton defines a case study as a '[means] to provide practice in problem solving and decision making in a simulated situation … The case method is primarily a vehicle for developing skills; skills which are a vital part of a decision maker's armoury.'[10] In the accounting education context, Wines et al describe case studies as typically possessing several features, including: issues, the consideration of which require the use of judgement and analytical reasoning skills; the inclusion of real or realistic situations, requiring a consideration of the complexity and ambiguity of the business world; and the existence of more than one possible solution to the case problem.[11]

Case studies can take many different forms and vary in their length,[12] mode,[13] extent of incorporation of actual business situations,[14] level of detail[15] and analytical approach.[16] Irrespective of the types of case studies used, the development of skills — particularly analytical and judgement — is propounded to be their primary benefit.[17]

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8 See Shapiro (n 1); Fulmer (n 1); Wines et al (n 1).

9 Carl Roland Christensen and Abby J Hansen, *Teaching and the Case Method* (Harvard Business School, 2nd ed, 1987) 27.

10 Geoff Easton, *Learning from Case Studies* (Prentice-Hall, 2nd ed, 1992).

11 Wines et al (n 1).

12 Jane E Campbell and William F Lewis, 'Using Cases in Accounting Classes' (1991) 6(2) *Issues in Accounting Education* 276.

13 Bonk and Smith (n 1).

14 AI Barkman, 'Teaching and Educational Note: The Use of Live Cases in the Accounting Information Systems Course' (1998) 16(3) *Journal of Accounting Education* 517.

15 Wines et al (n 1).

16 WR Knechel, 'Using the Case Method in Accounting Instruction' (1992) 7(2) *Issues in Accounting Education* 205.

17 Campbell and Lewis (n 12); Paul Kimmel, 'Framework for Incorporating Critical Thinking into Accounting Education' (1995) 13(3) *Journal of Accounting Education* 299; Sarah E Bonner, 'Choosing Teaching Methods Based on Learning Objectives: An Integrative Framework' (1999) 14(1) *Issues in Accounting Education* 11. See also PA Libby, 'Barriers to Using Cases in Accounting Education' (1991) 6(2) *Issues in Accounting Education* 193, 195.

While various forms of case studies have been used in accounting education, to date there has been limited use of case studies[18] as a teaching tool in taxation.[19] Conventionally, taxation courses are taught through the presentation of individual topics — although, in fact, areas of taxation are interrelated and do not exist independent of one another. Thus, this study seeks to explore the effectiveness of the use of an extended case study (based on a sole-trader business) in the teaching of a second-year taxation course (ACCT254: Introduction to Taxation ('ACCT254')) at the University of Canterbury.[20]

Against this background, the next section provides an overview of the literature on the use of case studies in accounting education and in the teaching of taxation. Part III outlines the methodology involved in the development and implementation of the extended case study, as well as the evaluation of its effectiveness. The evaluation includes conducting a student survey questionnaire, a quantitative analysis of students' test and examination results (both before and after the introduction of the extended case study), and reflections on lecturers' perceptions of the effectiveness of the extended case study. Part IV discusses the findings of the evaluation and Part V provides the conclusions of the research.

II THE USE OF CASE STUDIES IN ACCOUNTING EDUCATION AND TAXATION

The use of case studies in accounting education has become popular in recent decades because of the potential benefits in promoting deeper learning and generic skills in students.[21] Generic skills, sometimes referred to as 'soft skills', are:[22]

> 'the range of general education skills that are not domain - or practice-specific, which include communication and interpersonal skills, problem-solving skills,

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18 For examples of case studies in taxation, see Teresa Lightner and Robert C Ricketts, 'Tax Implications of Participating in Reality Television' (2007) 22(2) *Issues in Accounting Education* 247; Blaise M Sonnier, 'Utopia Home Health, Inc.: A Case Study on C Corporation Taxation from Cradle to Grave' (2010) 25(4) *Issues in Accounting Education* 755; Blaise M Sonnier et al, 'Reporting of Book-Tax Differences for Financial and Tax Purposes: A Case Study' (2012) 30(1) *Journal of Accounting Education* 58.

19 This is reinforced by research which indicates that taxation is regarded as a desired *technical skill* in accounting graduates. See Sharon Hayes, Brett Freudenberg and Deborah Delaney, 'Role of Tax Knowledge and Skills: What are the Graduate Skills Required by Small to Medium Accounting Firms' (2018) 13 *Journal of the Australasian Tax Teachers Association* 152.

20 The objective of the ACCT254 taxation course is to give students an introduction into the general principles of taxation. Topics include the principles of residence and source, income from employment, personal property sales, deductions, depreciation, leases and trading stock. The course also provides a working knowledge of income tax, goods and services tax ('GST'), and fringe benefit tax ('FBT') and the dispute resolution process.

21 Julia Wu, 'Using Case Studies in Accounting Education – A Re-Examination' (Conference Paper, New Zealand Applied Business Education Conference, 1 September 2010) 10.

22 Boyce et al (n 4) 37. See also Neil Crombie and Beverley Lord, 'Using the Case Study Method to Develop Generic Skills: An Analysis of Student and Tutor Perceptions' (Conference Paper, British Accounting Association Annual Conference, 21–23 April 2009).

conceptual/analytical and critical skills, visual, oral and aural skills, and judgement and synthesis skills.'

Over the years, an increased emphasis has been placed on the importance of developing generic skills in academic accounting. This is said to be due to a number of factors. First, the role of the accountant has changed significantly over time. In particular, developments in technology have meant that accountants are less involved in the preparation of financial information and more concerned with interpretation and communication of information.[23] Accordingly, accountants need communicative, analytical and other skills beyond technical and theoretical knowledge to carry out their job effectively. Generic skills are also essential in helping graduates to deal with the complexities of the modern business environment by encouraging not only their self-awareness, but also their self-confidence and ability to learn.[24] Secondly, academic accounting curricula are invariably influenced by the demands of employers — often channelled through professional associations — for well-skilled graduate employees. The significance of generic skills to the professional accountant is a theme which underpins the International Federation of Accountants International Education Standard 3.[25] The guideline establishes the professional skills that aspiring professional accountants need to develop and demonstrate in order to become a professional accountant. Professional skills are the (a) intellectual, (b) interpersonal and communication, (c) personal, and (d) organisational skills that a professional accountant integrates with technical competence and professional values, ethics, and attitudes to demonstrate professional competence.[26]

In the context of New Zealand, the current Chartered Accountants Program to become a chartered accountant includes a compulsory Capstone module which is a 12-week final module based on the analysis of business problems.[27] The Capstone module integrates technical knowledge and professional skills, using complex real-life case studies, in developing the professional competence required to be a chartered accountant. In addition, the final exam for the Capstone module comprises of three compulsory questions based on a case study to be completed within 3.5 hours.[28]

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23 Joan A Ballantine and Patricia McCourt Larres, 'A Critical Analysis of Students' Perceptions of the Usefulness of the Case Study Method in an Advanced Management Accounting Module: The Impact of Relevant Work Experience' (2004) 13(2) *Accounting Education* 171, 172.

24 M Crawford and J Keddie, 'Embedding Generic skills in an Accounting Curriculum' (Discussion Paper No 1, British Accounting Association Accounting Education Special Interest Group Working Paper Series, 1995).

25 International Federation of Accountants, *International Education Standard 3, Initial Professional Development – Professional Skills* (2015).

26 Ibid 44 [1].

27 The Chartered Accountants ('CA') Program is made up of five Graduate Diploma of Chartered Accounting (GradDip CA) modules (including the Capstone module) and a period of mentored practical experience. See Chartered Accountants Australia and New Zealand, 'CA Program Structure' (Web Page, 2020) <https://www.charteredaccountantsanz.com/become-a-member/course-descriptions/chartered-accountant>.

28 See Chartered Accountants Program, *CAP119 Module Outline* (2019) 5.

Despite the use of case studies in accounting education, only a limited number of studies have examined the usefulness of case studies in an accounting education context, with most of the literature being descriptive in nature.[29] From the students' perspective, Weil et al found that students perceived the major benefit of the use of case studies to be the way in which they exposed students to real-world complexity, particularly with respect to decision-making, followed by 'several solutions to business problems'.[30] They also found that the gender of students plays a role in perceiving the benefits of case study use — females show less favourable perceptions towards the use of case studies than males. Students with below-average academic performance also believe that they benefit more from the use of case studies than above-average students. Weil, Oyelere and Rainsbury extended the above study and found that New Zealand professional accounting school candidates perceived the major benefit of using case studies to be in improving their ability to assess business situations from multiple perspectives and providing multiple solutions.[31] Students' whose first language is not English perceived that case studies were more useful than students' whose first language is English. Students above age 30 perceived case studies as being more useful than younger students did. Weil, Oyelere and Rainsbury also found that while the rankings of the benefits of case studies by gender were similar,[32] there were some statistically significant differences in the competencies that were considered more useful.[33]

Wu further states that 'empirical research does not substantially prove that desirable outcomes have always been achieved by using case studies in accounting education.'[34] Adler, Whiting and Wynn-Williams,[35] and Wynn-Williams, Whiting and Adler[36] both found that case studies are not a panacea to enhancing generic skills. Instead, it depends

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29 Sidney Weil, Peter Oyelere and Elizabeth Rainsbury, 'The Usefulness of Case Studies in Developing Core Competencies in a professional Accounting Programme: A New Zealand Study' (2004) 13(2) Accounting Education 139, 141. See Sidney Weil et al, 'A Study of Students' Perceptions of the Usefulness of Case Studies for the Development of Finance and Accounting-Related Skills and Knowledge' (2001) 10(2) *Accounting Education* 123 for a summary of the literature on the nature of case studies, including their form and length, mode, extent of incorporation of actual business situations, level of detail, analytical approach, and how to incorporate the case method into accounting instruction.

30 Weil et al (n 29) 138.

31 Weil, Oyelere and Rainsbury (n 29) 161.

32 Ibid.

33 Ibid 156. Competencies included 'ability to present a viewpoint' and 'appropriate questioning skills'.

34 Wu (n 21) 12.

35 Ralph W Adler, Rosalind H Whiting and Kate Wynn-Williams, 'Student-Led and Teacher-Led Case Presentations: Empirical Evidence About Learning Styles in an Accounting Course' (2004) 13(2) *Accounting Education: An International Journal* 213.

36 Kate Wynn-Williams, Rosalind H Whiting and Ralph W Adler, 'The Influence of Business Case Studies on Learning Styles: An Empirical Investigation' (2008) 17(2) *Accounting Education* 113.

on who takes responsibility for leading the case.[37] Furthermore, students who were not actively involved in the case study process became less balanced in their learning style approach.[38] Healy and McCutcheon — who explored the experience of accounting lecturers at an Irish university when teaching with case studies — also argue that the effective use of accounting case studies in the classroom is influenced by the manner in which lecturers engage with students.[39] Relevantly, three categories describing lecturers' use of case studies in teaching emerge in their research: controller, facilitator, and partner.[40] However, of these categories, only the partners apply the case method with the explicit intention of fostering deeper learning and personal development.

With respect to published case studies that have been used in accounting education, there are numerous case studies published in accounting education journals that can be used in teaching. A study by Wu in 2010 reviewed 89 case studies published in four selected journals for accounting education.[41] The cases under review were categorised by the following subject areas: financial accounting, management accounting, auditing, internal control/audit, accounting information systems and taxation. Table 1 below summarises the number of cases included in each of the categories.[42]

TABLE 1: NUMBER OF CASE STUDIES PUBLISHED IN ACCOUNTING-RELATED SUBJECT AREAS[43]

SUBJECT AREA	NUMBER OF CASE STUDIES	PERCENTAGE (%)
Financial Accounting	29	33
Management Accounting	23	26
Auditing	19	21
Internal Control/Audit	13	15
Accounting Information Systems	3	3

37 Therefore, the danger of using the Harvard-style case study approach, which epitomises a teacher-led approach, is that it not only runs the risk of promoting less balanced learners, but it also likely threatens students' future learning by undermining and retarding their development into self-directed learners. Adler, Whiting and Wynn-Williams (n 35) 226.

38 Wynn-Williams, Whiting and Adler (n 36) 113.

39 Margaret Healy and Maeve McCutcheon, 'Teaching with Case Studies: An Empirical Investigation of Accounting Lecturers' Experiences' (2010) 19(6) *Accounting Education: An International Journal* 555.

40 Ibid 563–565.

41 Wu's study was based on a similar study conducted in 2006 by Lipe who published a summary of case studies in *Issues in Accounting Education* from its first issue in 1986 to November 2006. See MG Lipe 'Using Cases Published in Issues in Accounting Education: Categories and Topics at a Glance' (2006) 21(4) *Issues in Accounting Education* 417. The selected journals in Wu's study were: *Accounting Education: An International Journal*; *Issues in Accounting Education*; *Journal of Accounting Education*; and *Global Perspectives on Accounting Education*. The journals were searched for relevant journal articles including case studies from the publication of the journal's first issue to 2011 (except for *Issues in Accounting Education* which was searched from November 2006 to 2011).

42 See Wu (n 21) app, for a full list of the 89 case studies under review grouped under their designated subject areas.

43 Ibid 6, Table 1.

Taxation	2	2
Totals	**89**	**100**

Wu's 2010 findings indicate that the case studies in accounting education were dominated by case studies in a financial (33 per cent) or management accounting (26 per cent) setting, and there were few instances of case studies in the area of taxation (2 per cent).[44] A later study conducted by Wu in 2017, reviewed the case studies published in seven academic journals from their first issue in 2006 to 2017.[45] The distribution — according to their subject area — of the 324 published case studies reviewed is shown in Table 2. Wu notes that notwithstanding the fact that case studies are well-published in these journals, there has been a declining trend in the number of cases published since 2012.[46]

TABLE 2: NUMBER OF CASE STUDIES PUBLISHED IN ACCOUNTING-RELATED SUBJECT AREAS[47]

SUBJECT AREA	NUMBER OF CASE STUDIES	PERCENTAGE (%)
Financial Accounting	62	19.1
Auditing	60	18.5
Fraud	50	15.4
Internal Control	42	13.0
Information Systems	23	7.1
Management Accounting	19	5.9
Forensic Accounting	16	4.9
Corporate Finance	12	3.7
Taxation	9	2.8
Other[48]	31	9.6
Totals	**324**	**100**

Wu's 2017 findings indicate that case studies in accounting education continue to be dominated by case studies in the financial accounting subject area (19.1 per cent). However, in comparison to the literature reviewed by Wu in 2010, case studies in auditing (18.5 per cent), fraud (15.4 per cent) and internal control (13 per cent) have

44 Ibid 6.

45 Julia Wu, *Using Complex Case Studies to Teach Law and Accounting: Project Report* (2019). The seven journals were: *Accounting Education: An International Journal*; *Advances in Accounting Education: Teaching and Curriculum Innovations*; *Global Perspectives on Accounting Education*; *Issues in Accounting Education*; *Journal of Accounting Education*; *Accounting Educators' Journal*; and the *Journal of Accounting Case Research* (discontinued and integrated into *Accounting Perspectives* in 2007).

46 Ibid 15. According to Metcalf et al, the citation-based accounting education publication rankings and related performance evaluation systems have contributed to the declining number of case studies published. See Mark Metcalf et al, 'Citation-Based Accounting Education Publication Rankings' (2015) 33(4) *Journal of Accounting Education* 294.

47 Wu (n 45) 15, Table 3.

48 Case studies that were classified as 'other' include the subject areas of corporate governance, compliance, management strategies, or case studies that were classified as being able to be used in two or more subject areas.

significantly increased as a proportion of the total published cases.[49] Increased regulatory requirements in the world's major capital markets, for instance, the *Sarbanes Oxley Act of 2002*, may have contributed to this shift.[50] Of relevance to this study, is that the number of published cases in the area of taxation continues to be limited (2.8 per cent) in comparison to other subject areas. While no specific research appears to exist exploring the reasons for the limited use of case studies in taxation to date, the general impediments to the use of case studies in accounting education identified in the literature may be applicable. These include, for example, preparation time for the instructor, instructor training time for the method, time needed to cover a topic, difficulty of presenting new material, and depth of topic coverage.[51] Wu additionally outlines the following barriers to the proper implementation of the case study method: lack of good quality cases, students' resistance, large class size(s) and the heavy workload of lecturers.[52]

More recently, Kraal and Coleman[53] undertook a case study of legal studies courses for degrees within a business school located at an Australian university with a high concentration of international students. Through interviews and surveys, the authors' concluded that while a particular method used to solve legal problems is sound, problems existed in the way it was taught.

Set against the above background, this study seeks to explore the effectiveness of using an extended case study in the teaching of a second-year taxation course, ACCT254, at the University of Canterbury. The primary objectives of utilising the extended case study in the taxation course are not only the development of generic skills, but also to enhance students' understanding of how tax relates to the real-world and their understanding that the tax topics themselves are interrelated and not 'fragmented', as might be conveyed through traditional lecture-based teaching methods (thus, the use of an extended case study, rather than individual case studies).[54]

III TOMINDA PRODUCTS EXTENDED CASE STUDY

A *Introduction*

This paper adopts a mixed-methods approach — a case study and survey of students evaluating the effectiveness of the case study (supplemented by the lecturers' personal reflections). This section discusses the development and implementation of the extended

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49 Wu (n 45) 15.

50 Ibid.

51 See Libby (n 17) 195–196.

52 Wu (n 45) 31.

53 Dianne Kraal and Andrew Coleman, 'Teaching Legal Studies in Business Degrees: A Review of a Method and its Practice' (2019) 44(11) *Australian Journal of Teacher Education* 18, 37.

54 See Ian Dennis, 'OK in Practice – and Theory: The Experience of Using an Extended Case Study in Auditing Education: A Teaching Note' (2003) 12(4) *Accounting Education* 415, 418–423 for further details on the use of an extended case study.

case study, and Part IV considers the findings from the student survey in addition to the lecturers' reflections.

B *The Case Study Method*

McKerchar observes that the term 'case study' can have different meanings in different contexts,[55] including referring 'to a pedagogical device, such as used in a classroom, where a case, usually a company or economy, is studied in-depth.'[56] McKerchar further notes that as a methodological approach it 'generally involves a researcher undertaking an in-depth exploration of a program, an event, an activity, or a process concerning one or more individuals'[57] — the 'detailed and intensive analysis of a single case'.[58] A case study is usually bounded by time and activity, and detailed information is collected by the researcher using a variety of data collection procedures.[59] Similar to this study, case studies often use mixed research methods.[60] The ACCT254 case can be characterised as a 'representative or typical case' as it 'seeks to explore a case that exemplifies an everyday situation',[61] and is also a 'longitudinal case' that is 'concerned with how a situation changes over time.'[62] Bell, Bryman and Harley[63] observe that the selection (or in this case, the development) of the case study should be based on the anticipation of the opportunity to learn. The use of the case study method, and the development of the scenarios themselves (outlined in Part III D below), were aimed at maximising the opportunity for students in ACCT254 to develop generic skills, such as problem-solving and dealing with uncertainty.

Accounting and management educators use case studies in a variety of ways. At one end of the continuum, case studies are used exclusively as the primary learning mechanism; the belief being that this method of learning provides the foundation of an integrated, inductively-driven teaching process. The model adopted by Harvard Business School is indicative of such an approach.[64] More common, at the other end of the continuum,

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55 Margaret McKerchar, *Design and Conduct of Research in Tax, Law and Accounting* (Thomson Reuters, 2010) 101.

56 Ibid.

57 Ibid 102.

58 Emma Bell, Alan Bryman and Bill Harley, *Business Research Methods* (Oxford University Press, 5th ed, 2018) 62.

59 McKerchar (n 55) 102.

60 Bell, Bryman and Harley (n 58) 63.

61 Ibid 66.

62 Ibid.

63 Ibid 64.

64 With the establishment of its case study method in the 1920s, the use of cases is still central to the teaching and learning of the Harvard Business School. Michael J Roberts, executive director of case development at Harvard Business School, argues that the case study method continues to be the most effective teaching technique because of its applicability to real management situations. See Harvard Business School, 'Making a Case: The Birth of an HBS Case Study' (2001) *Enterprise Newsletter* 2.

accounting and management educators use short case studies on an irregular basis to illustrate real-world practices in either formal lectures or as part of the seminar/tutorial process.[65] Between these two extremes is the extended case study approach, 'requiring students to prepare and discuss solutions to lengthier, more ambiguous cases with [a] problem solving focus.'[66] It is claimed that such an approach accomplishes many of the objectives of a pure case study course while still retaining a lecture and instructor-led discussion format for the remainder of the course.[67] One such example of this approach in accounting education is provided by Dennis in the context of teaching an auditing course, in which an 'extended case study' is developed and implemented in preference to using existing case studies.[68] Relevantly, Dennis asserts that 'using individual case studies to cover different aspects of auditing practice gives a fragmented view of the audit experience.'[69] This is due to the fact that evidence obtained in one area may be relevant to assertions in other audit areas and students therefore need to be aware of how all the evidence inputs into the final audit opinion. Accordingly, in Dennis' study, an extended case study was used to create a simulated audit experience over an eight-week course. A longitudinal or extended case study format was adopted for ACCT254 in order to enable students to understand the interrelationship between the various topics taught, rather than obtaining a fragmented view of taxation.

C *Teaching Arrangements for ACCT254*

Each week, the ACCT254 taxation course consists of a two-hour lecture, a one-hour workshop and a one-hour tutorial. The lectures and workshops for the course are video recorded and placed on the course's web-based Learn platform each week. The workshops, which are conducted by the lecturer teaching that week's material, allow the lecturer to work through pre-set questions (often based on previous tests and exams) with the students and are intended to be interactive. In addition, an optional one-hour drop-in class is available each week for students with queries concerning the course content to attend (student queries are not limited and can cover the material explored in the extended case study). In 2019, there were 152 students enrolled in the ACCT254 course. Consistent with the literature discussed above, the extended case study implemented was used as a complement to, and not as a replacement for, the above pre-existing teaching methods utilised in the ACCT254 course.

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65 Libby (n 17) 194–195.

66 Ibid 195.

67 Ibid.

68 Dennis (n 54). See also Christopher Walker, 'Teaching Policy Theory and its Application to Practice Using Long Structured Case Studies: An Approach that Deeply Engages Undergraduate Students' (2009) 20(2) *International Journal of Teaching and Learning in Higher Education* 214 on the use of extended case studies in the context of teaching policy theory.

69 Dennis (n 54) 418–419. See also Richard Slack, Jan Loughran and Kirsty Abrahams, 'Corporate Associate Partnerships: Practitioners' Involvement in the Delivery of an Auditing Course Based on a Case-Study: A Teaching Resource' (2014) 23(3) *Accounting Education: An International Journal* 262, 263.

D *Development and Implementation of the Tominda Products Extended Case Study*

The extended case study concerned a fictitious sole-trader business invented by the authors and called Tominda Products. Relevantly, Tominda Products was operated by Tomas Bloom and initially manufactured two products for pedal-driven bicycles — the Supa Brite LED bicycle light and the Supa Charga bolt-on long-life bicycle battery. Tomas was married to Jacinda Bloom, who owned and operated a successful landscape design business. Both Tomas and Jacinda lived with their young son on a property in West Melton, a town located 20 kilometres west of Christchurch, New Zealand. Tomas initially manufactured both products from a large garage situated on their property and employed five staff to help him throughout the manufacturing process. After employing a further staff member, Tomas extended the production of Tominda Products to a third product — the Supa Charga Electrik car battery, a long-range battery for electric cars. As a result of this development, Tomas shifts the business' operations to premises located in Christchurch.

As stated in Part II, the objective of using the extended case study approach was to develop students' understanding of how tax relates to the real-world and that the tax topics themselves are interrelated. Therefore, the Tominda Products extended case study was composed of an interrelated string of 12 individual case study scenarios pertaining to the lecture topic for each of the 12 weeks of the taxation course.[70] The first case study scenario served to provide an introductory background to the extended case study by introducing the Tominda Products business and the main characters of the case study, Tomas and Jacinda Bloom.[71] In order to develop students' abilities to recognise and deal with uncertainty, and identify relevant taxation issues, the individual case study scenarios were drafted so that they contained both relevant and irrelevant details in relation to the relevant lecture topic.

The individual case study scenarios for the extended case study were drafted and refined over a series of 11 meetings held between at least two of the three authors of this paper and over the period 1 November 2018 to 22 January 2019. The case study scenarios were reviewed by one taxation academic and one accounting academic prior to being finalised by the authors. In addition to the case study scenarios, 'Points to Consider' notes were drafted for each teaching week and contained reference notes for the course lecturers to use which outlined the tax issues to be highlighted in the case study scenarios, as well as the applicable legislation and/or case law relevant to that week's lecture topic.[72] The individual case study scenarios for each week were uploaded to the course's Learn platform — in the form of a separate Microsoft Word document — prior to each week's

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70 As already noted, the lecture topics are: introduction to Inland Revenue and tax investigations, principles of residence and source, income of individuals, personal property sales, deductions, FBT, GST, depreciation, leases and trading stock, taxation of partnerships and introduction to trusts, taxation of trusts, and the dispute resolution process.

71 In the first lecture of the course, the distinction between the fictional extended case study (non-authoritative) and real-life case law (authoritative) was also emphasised.

72 The 'Points to Consider' notes were for the lecturers' reference only and were not provided to the students.

lectures (along with the week's lecture notes and Microsoft PowerPoint slides). No questions to the individual case study scenarios were included with the weekly uploaded case study material. This gave the lecturers the ability, and fluidity, to identify relevant tax issues in the scenarios during the class and develop their own questions (as appropriate) based on the details given in the case study scenarios.[73] This approach also served to encourage class interaction and discussion on the relevant tax issues. Furthermore, no 'model answers' were provided to the students. However, students attending the lectures (or workshops) had the benefit of receiving details concerning the tax issues arising from the case study scenarios as incorporated in class by the lecturers.[74] The extended case study itself was also not formally assessed through the term tests and final examination for the course.[75] However, as stated above, it was implemented in order to complement (and not replace) the teaching of the technical content contained in the course's weekly lectures, workshops and tutorials.[76]

E *Evaluating the Tominda Products Extended Case Study*

The effectiveness of the extended case study was evaluated in three ways using both quantitative and qualitative measures. In order to evaluate students' perspectives of the extended case study as a teaching tool in the taxation course, a survey questionnaire on the extended case study was administered in class in the penultimate lecture of the semester (a copy of the survey questionnaire is contained in Appendix 1 of this paper).[77] In addition, in order to survey those students who did not attend lectures (or who did not attend that particular lecture),[78] the survey questionnaire was placed on the course's Learn platform the day following the in-class administration of the survey. The online survey remained open for one week. The survey was administered both in class and online in order to capture as many responses as possible.[79] Completion of the survey

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73 The lecturers had the liberty to incorporate relevant points from the case study scenario within the Microsoft PowerPoints used in class if they chose to. Where this occurred, two sets of Microsoft PowerPoint slides were prepared — the lecturer version included additional material (e.g. issues and points) from the case study.

74 This was also intended to encourage students to attend classes and to stimulate student engagement.

75 The current distribution of the assessment for the course is as follows: final examination (40 per cent), tutorial preparation (10 per cent), term test one (20 per cent) and term test two (30 per cent).

76 However, as noted in Part IV B below, one of the methods of evaluating the effectiveness of the extended case study for the purposes of this research, was through a quantitative analysis of students' test and examination results, both before and after the introduction of the extended case study approach.

77 The survey questionnaire was accompanied by an information sheet explaining (amongst other things) the purpose of the survey questionnaire and that the survey was voluntary, anonymous and confidential.

78 As noted in Part I, the lectures for the course are video recorded and placed on the course's Learn platform at the end of each week's lecture.

79 The dual method of survey administration meant that there was the potential for duplicate responses to be received (i.e. the same participant completing both the paper-based and online surveys). However, the authors do not believe this occurred in this study.

questionnaire was anonymous and voluntary. Students' completion and submission of the survey questionnaire was taken as their consent for the data to be used in this research.

The survey questionnaire consisted of three parts concerning: students' evaluations of the skills acquired or developed through learning with the extended case study; evaluations of the benefits of learning with the extended case study; and evaluations of students' experience with the extended case study and recommendations for the further use of extended case studies in taxation courses.

Students were asked to indicate whether they agreed or disagreed with 17 separate statements concerning the extended case study using the following five-point Likert scale: 1 = '*strongly disagree*'; 2 = '*disagree*'; 3 = '*neutral*'; 4 = '*agree*'; and 5 = '*strongly agree*'. The survey questions were devised around the benefits identified by Libby[80] (and others)[81] of using case studies with respect to accounting students, and which include:

a. affective benefits, such as student motivation and interest in material (e.g. Survey Questions 8 and 14); and

b. cognitive benefits, for example:

   - development of critical thinking and problem-solving skills (e.g. Survey Questions 1, 2, 3);
   - development of the ability to solve problems addressing multiple issues and to deal with ambiguity (e.g. Survey Questions 9, 10, 11);
   - development of an understanding of the real world (e.g. Survey Questions 7 and 12);
   - (improved) comprehension of the material by students (e.g. Survey Questions 4, 5, 6 and 13).

Relevantly, Survey Questions 15 to 17 focused on the potential future use of case studies in taxation courses.

In addition, four open-ended questions were asked allowing for qualitative feedback on the skills, benefits and difficulties associated with the extended case study, as well as the opportunity to provide any additional comments. The survey questionnaire was reviewed by two senior academics at the University of Canterbury and approved by the University of Canterbury Human Ethics Committee prior to its administration.[82] As the case study was seeking data on ethnicity and could potentially involve issues pertaining to Māori people (as it included a real-world case study) the authors engaged with the Ngāi Tahu Consultation and Engagement Group. The findings of the survey questionnaire are contained in Part IV A below.

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80 Libby (n 17) 195. Boyce et al (n 4) 37. See also Crombie and Lord (n 22).

81 Boyce et al (n 4) 37. See also Crombie and Lord (n 22).

82 The survey questionnaire was also reviewed by a taxation academic prior to being finalised.

In addition to the student survey questionnaire, data concerning the spread of aggregate unscaled student grades achieved in the two term tests and the final examination for the current year (2019), and the prior three years (2016–2018), were compared in order to establish whether there was a difference in the spread of grades achieved before and after the implementation of the extended case study in the ACCT254 course.[83] The findings of the quantitative analysis are provided in Part IV B below.

The lecturers involved in ACCT254 also personally reflected on the effectiveness of the extended case study. A summary of the lecturers' personal reflections on the extended case study is provided in Part IV C below.

IV FINDINGS OF THE EVALUATION OF THE TOMINDA PRODUCTS EXTENDED CASE STUDY

This section presents the findings of the student survey questionnaire (Part IV A), the quantitative analysis of students' test and examination results (Part IV B) and lecturers' perspectives on the effectiveness of the extended case study (Part IV C). Recommendations and limitations of the extended case study are subsequently discussed in Part IV D.

A *Findings from the Student Survey Questionnaire*

1 *Demographic Information of Participants*

Of the 152 students enrolled in the ACCT254 course in 2019, a total of 55 students completed the survey questionnaire (54 in class (paper-based) and 1 online),[84] yielding a 36 per cent response rate. Relevantly, 27 of the survey participants were female (49 per cent), 26 were male (47 per cent), and 2 were gender diverse (4 per cent). The ethnicities of the participants were as follows: 22 were New Zealand European/Pākehā (40 per cent), 1 was Māori (2 per cent), 29 were Asian (53 per cent), and 3 belonged to other ethnic groups (5 per cent). Twenty-nine (53 per cent) of the participants indicated that English was their first language. Nine (16 per cent) of the participants had accounting/taxation related work experience.[85]

2 *Skills Acquired or Developed from the Extended Case Study*

Table 3 (below) indicates that the majority (71 per cent) of the respondents either '*agree*' or '*strongly agree*' with the notion that the extended case study helped to develop their critical thinking skills (e.g. identifying and evaluating the relevant information) and 69

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83 The data was obtained by the authors from the University of Canterbury Department of Accounting and Information Systems. The data was obtained in aggregate form and was not able to be attributed to individual students.

84 There were five recorded accesses to the online survey during the time period the survey was open, however only one complete response was received.

85 The accounting/taxation related work experience was specified as forms of 'accounting intern', 'associate accountant' and 'accountant'.

per cent either '*agree*' or '*strongly* agree' that the extended case study helped them in applying relevant case law and/or legislation to particular scenarios. The mean responses for the development of these skills were 3.84 and 3.85 (out of 5) respectively. Sixty per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study helped develop their problem-solving skills, with a mean response of 3.65.

TABLE 3: SKILLS FROM THE EXTENDED CASE STUDY

SURVEY QUESTION: THE EXTENDED CASE STUDY …	COUNT					MEAN
	1 = STRONGLY DISAGREE	2 = DISAGREE	3 = NEUTRAL	4 = AGREE	5 = STRONGLY AGREE	
Helped develop my critical thinking skills (e.g. identifying and evaluating the relevant information)	0 (0%)	2 (4%)	14 (25%)	30 (55%)	9 (16%)	3.84
Helped develop my problem-solving skills	0 (0%)	5 (9%)	17 (31%)	25 (45%)	8 (15%)	3.65
Helped me to apply relevant case law and/or legislation to particular scenarios	1 (2%)	2 (4%)	14 (25%)	25 (45%)	13 (24%)	3.85
Helped me to answer the questions in the ACCT254 workshops	2 (4%)	6 (11%)	15 (27%)	25 (45%)	7 (13%)	3.53
Helped me to answer the questions in the ACCT254 tutorials	3 (5%)	7 (13%)	15 (27%)	21 (38%)	9 (16%)	3.47
Helped me to prepare for the ACCT254 term tests	3 (5%)	13 (24%)	10 (18%)	23 (42%)	6 (11%)	3.29

The written comments provided by respondents on their perceptions of the skills acquired or developed through learning with the extended case study aligned with the above statistics:

> 'Finding material facts relevant. Applying legislation and case law.'
>
> 'It helped with […] identifying the relevant info bit.'
>
> 'I felt it helped in dealing with a large amount of information and extracting the key elements and relevant facts from it.'
>
> 'Help[ed] develop the ability [to] analys[e] complicated case problem[s].'

Fifty-eight per cent and 54 per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study helped them answer the questions in the ACCT254 workshops and tutorials respectively (with mean responses of 3.53 and 3.47). However, only 53 per cent either '*agree*' or '*strongly agree*' that the extended case study helped them to prepare for the ACCT254 term tests (with a mean response of 3.29).

3 *Benefits of the Extended Case Study*

As shown in Table 4 below, 77 per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study presented realistic scenarios of taxation, giving a mean response of 3.93. This aligns with earlier research conducted by Weil et al which found that students perceived case studies to be most useful in exposing them to real-world complexity.[86]

TABLE 4: BENEFITS OF THE EXTENDED CASE STUDY

SURVEY QUESTION: THE EXTENDED CASE STUDY ...	COUNT					MEAN
	1 = STRONGLY DISAGREE	2 = DISAGREE	3 = NEUTRAL	4 = AGREE	5 = STRONGLY AGREE	
Presented realistic taxation scenarios	0 (0%)	3 (6%)	9 (17%)	31 (57%)	11 (20%)	3.93
Was interesting to me	1 (2%)	7 (13%)	20 (36%)	18 (33%)	9 (16%)	3.49
Helped me to learn that taxation issues are interrelated (i.e. do not exist independently of one another)	0 (0%)	4 (7%)	11 (20%)	27 (49%)	13 (24%)	3.89
Improved my ability to identify relevant taxation issues	1 (2%)	3 (5%)	10 (18%)	31 (56%)	10 (18%)	3.84
Improved my ability to recognise and deal with uncertainty	0 (0%)	8 (15%)	20 (36%)	21 (38%)	6 (11%)	3.45
Introduced me to the professional context of advising in taxation	0 (0%)	4 (7%)	22 (40%)	19 (35%)	10 (18%)	3.64

The written comments from the respondents on their perceptions of the benefits of learning with the extended case study were further consistent with these statistics:

> 'Can relate with many problem[s] that arise.'
>
> 'It helped when we learned a topic in class we saw it in a "real world" context.'
>
> 'Being able to think of how tax can be applied to real-world situations.'
>
> 'May be […] useful for real work in the field.'

Only 49 per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study was interesting to them, giving a mean response of 3.49. Seventy-three per cent and 74 per cent of the respondents either '*agree*' or '*strongly agree*' that the benefits of the extended case study were that it helped them to learn that taxation issues are interrelated, and that it improved their ability to identify relevant taxation issues respectively. The mean responses for these benefits were 3.89 and 3.84 respectively. The

86 Weil et al (n 29) 138.

comments provided by respondents also supported the benefit of improving students' ability to identify relevant issues in addition to understanding taxation concepts:

> 'Gave us plenty of info to sort through and work out what was actually relevant.'
>
> 'Help[ed] me understand concepts in taxation.'
>
> 'At times I would struggle with a particular section or concept but when I see the fact scenario of how it applies in the case study it makes more sense.'
>
> 'Helps to understand the facts, relevant information.'

However, only 49 per cent of the respondents either '*agree*' or '*strongly agree*' that a benefit of the extended case study was that it improved their ability to recognise and deal with uncertainty, with a mean response of 3.45. Fifty-three per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study was beneficial in introducing them to the professional context of advising in taxation, yielding a mean response of 3.64.

4 *Experience of the Extended Case Study and Recommendations for Future Use*

As indicated in Table 5 below, 71 per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study was easy to read and understand, giving a mean response of 4.02. Notwithstanding, only 45 per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study made their learning experience more enjoyable. The mean response of 3.45 is consistent with the mean response of 3.49 in Part IV A 3 above with respect to the extended case study being perceived as interesting to respondents. Sixty-six per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study should continue to be used in ACCT254 lectures in the future, giving a mean response of 3.80. However, only 44 per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study should also be used in ACCT254 tutorials, with a mean response of 3.44. Fifty-five per cent of the respondents either '*agree*' or '*strongly agree*' that the extended case study should also be used in advanced taxation courses beyond ACCT254, giving a mean response of 3.60.

TABLE 5: EXPERIENCE OF THE EXTENDED CASE STUDY AND FUTURE RECOMMENDATIONS

SURVEY QUESTION: THE EXTENDED CASE STUDY …	COUNT					MEAN
	1 = STRONGLY DISAGREE	2 = DISAGREE	3 = NEUTRAL	4 = AGREE	5 = STRONGLY AGREE	
Was easy to read and understand	0 (0%)	1 (2%)	15 (27%)	21 (38%)	18 (33%)	4.02
Made my learning experience in ACCT254 more enjoyable	1 (2%)	9 (16%)	20 (36%)	14 (25%)	11 (20%)	3.45
Should continue to be used in ACCT254 lectures in the future	0 (0%)	5 (9%)	14 (25%)	23 (42%)	13 (24%)	3.80

Should be extended to also being used in the ACCT254 tutorials	2 (4%)	9 (16%)	20 (36%)	11 (20%)	13 (24%)	3.44
Should also be used in advanced taxation courses	2 (4%)	5 (9%)	18 (33%)	18 (33%)	12 (22%)	3.60

The written comments concerning the difficulties experienced by the respondents in learning with the extended case study indicated that some students found the case scenarios 'too big' and 'confusing'. This perhaps suggests that some students struggled with the ability to deal with uncertainty and is consistent with the mean response of 3.45 in Part IV A 3 above in relation to the respondents' perceptions on the extended case study improving their ability to recognise and deal with uncertainty.

> 'Too many points and issues in one case.'
>
> 'Too much to digest in one go. Would be far more beneficial to be used in tutorials.'
>
> 'Sometimes case studies are too big, it's hard to remember.'

Students also expressed a desire for solutions, or some form of summary, for the extended case study to be provided:

> 'If answers [to] the case study can be provided then it will be much more helpful.'
>
> 'Potentially have another page with relevant legislation and cases to the scenario.'
>
> 'Would be better if the class can dissect each [of the] issues in the case every week and provide a more comprehensive solution.'
>
> 'Only suggestion would be to perhaps have a quick run down at the beginning of each class as to what is in the case study info for that week so that we can think about it as we go.'
>
> '… if time [permits,] go through [the] relevant sections as you go possibly highlighting elements at the end so [that] understanding is immediate [and] then remembered.'

The above findings indicate that students are potentially not used to the amount of information included and the way facts are presented in the context of learning with case studies. As commented by one respondent: '[w]as very long and confusing'. However, as Boyce et al notes, facts selectively presented for their relevance to the issues and concepts, and arranged according to their perceived significance (as per the use of traditional teaching methods), are suitable for the development of basic skills.[87] But, for the development of higher problem-solving and communication skills (as per the use of case studies), 'presented data should include *more* facts than needed and be presented as *opinions* of case characters rather than as givens.'[88] Hence the intentional inclusion of both relevant and irrelevant details in the case study scenarios by the authors of this study. These findings also align with the accounting education literature which indicates

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87 Boyce et al (n 4) 47.

88 Ibid (emphasis in original). In the specific context of tax, Kimmel (n 17) 311 states that: '[s]tudents should be required to "gather facts and data," rather than always being provided with the facts.'

a predisposition to view the learning of accounting as consisting of rote memorisation, which is confirmed by traditional teaching methods and heavy content-oriented workloads, leading to learning behaviours that are inconsistent with the development of generic skills.[89]

The mean responses to the survey questionnaire (see Table 5 above) ranged from 3.44 to 4.02 and indicate that students' perceptions of their experiences with the extended case study could potentially be improved upon. Furthermore, the comments from the respondents revealed that students' thought that the extended case study could be 'integrated' into lectures better, rather than used in an apparent ad hoc manner:

> 'Should be mentioned and linked to through the lecture, rather than at the very end.'
>
> 'It [was] not discussed lengthily in class. It was almost like an afterthought. The idea is wonderful but the execution needs improvement.'
>
> 'I found that they seemed to pop up in odd parts during the lectures … Some lecturers inter linked the case study better than others, and some simply slammed through it and talked about it.'
>
> 'Perhaps, the case study should be integrated into the lecture more, which would help me to understand it easier.'

Further comments on the perceived usefulness of the extended case study (which was a non-authoritative case, and therefore unable to be cited as authority in students' assessments) in comparison to case law (which was authoritative and therefore able to be cited as authority by students), was consistent with the mean response of 3.29 (see Table 3 above) in Part IV A 2 on assisting students in preparing for term tests:

> 'If we used the cases we use in exams, [it] would be beneficial. Why learn a case that isn't helpful?'
>
> 'If it's not able to be used in the test, why use it? Would make more sense going over relevant cases.'
>
> 'Didn't use it in my revision for the test as it couldn't be used as case law, however if I was confused about a certain topic, I may read it.'

The above comments indicate that students would have perceived the extended case study as being more useful to them if they were assessed on it.

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89 BC Inman, A Wenzler and PD Wickert, 'Square Pegs in Round Holes: Are Accounting Students Well-Suited to Today's Accounting Profession?' (1989) 4(1) *Issues in Accounting Education* 29, 44; Lyn Gow, David Kember and Barry Cooper, 'The Teaching Context and Approaches to Study of Accountancy Students' (1994) 9(1) *Issues in Accounting Education* 118.

B *Findings from the Quantitative Analysis of Students' Test and Examination Results*

Tables 6, 7 and 8 below, show the distributions of unscaled student grades, pass rates[90] and mean marks[91] for the three assessments conducted in the taxation course — term test one, term test two and the final examination for the year in which the extended case study was implemented (2019) and the three previous years (2016–2018).[92] The data from these tables show that overall, it appears that generally, students' performance in the year that the extended case study was utilised was higher compared to the years in which it was not. The pass rate and the mean mark achieved was higher in 2019 for term test one and the final examination (but not for term test two), when compared to the three previous years. Although these findings may provide some limited evidence of the effectiveness of the extended case study as a teaching tool in taxation in improving students' performance, the above findings must be interpreted with some caution. The findings cannot be completely relied upon due to the influence of multiple factors such as, for example, differences between years in the cohorts of students, differences in the material assessed, differences in the specific test and examination questions and differences in the marking of the assessments. However, these findings are nonetheless worth including as a quantitative measure of the effectiveness of the extended case study on student performance, in conjunction with the qualitative findings from the student survey and the lecturers' perspectives. Further, and more significantly, the respective data for further years in which the extended case study is utilised would be beneficial in potentially confirming or refuting these findings.

TABLE 6: DISTRIBUTION OF UNSCALED STUDENT GRADES FOR TERM TEST ONE

YEAR	PERCENTAGE OF TOTAL STUDENTS (%)											PASS RATE	MEAN MARK
	A+	A	A-	B+	B	B-	C+	C	C-	D	E		
2019	6	6	6	8	14	14	14	10	4	14	5	81%	65%
2018	1	1	2	6	8	10	14	12	12	16	19	65%	54%
2017	6	6	6	8	11	9	12	8	11	14	10	76%	62%
2016	9	5	9	9	11	6	11	6	8	13	13	74%	63%

[90] The grading conversion scale is as follows: A+ (90–100 per cent); A (85–89.9 per cent); A- (80–84.9 per cent); B+ (75–79.9 per cent); B (70–74.9 per cent); B- (65–69.9 per cent); C+ (60–64.9 per cent); C (55–59.9 per cent); C- (50–54.9 per cent); D (40–49.9 per cent); and E (0–39.9 per cent). The pass rate is the total percentage of students achieving C- or higher (i.e. 50 per cent or higher).

[91] The mean mark is the mean total mark divided by the maximum mark achievable, expressed as a percentage.

[92] All percentages in Tables 6, 7 and 8 have been rounded to the nearest whole percentage. Therefore, the percentage of total students achieving grades ranging from A+ to E may not total 100 per cent.

TABLE 7: DISTRIBUTION OF UNSCALED STUDENT GRADES FOR TERM TEST TWO

YEAR	PERCENTAGE OF TOTAL STUDENTS (%)											PASS RATE	MEAN MARK
	A+	A	A-	B+	B	B-	C+	C	C-	D	E		
2019	1	1	1	11	13	9	13	11	13	17	10	73%	59%
2018	2	5	5	9	7	12	10	12	9	19	10	71%	61%
2017	1	5	5	5	5	8	7	10	10	19	24	57%	54%
2016	9	5	5	5	10	7	12	10	12	13	11	76%	62%

TABLE 8: DISTRIBUTION OF UNSCALED STUDENT GRADES FOR FINAL EXAMINATION

YEAR	PERCENTAGE OF TOTAL STUDENTS (%)											PASS RATE	MEAN MARK
	A+	A	A-	B+	B	B-	C+	C	C-	D	E		
2019	1	4	7	11	11	14	7	10	15	9	10	81%	62%
2018	7	2	3	8	12	13	10	9	8	17	12	71%	61%
2017	0	3	7	7	11	11	12	8	12	15	15	71%	59%
2016	7	5	0	7	10	9	9	10	7	14	15	72%	61%

C *The Lecturers' Personal Reflections on the Effectiveness of the Extended Case Study*

These reflections were prepared by the lecturers involved in the course prior to analysing the student feedback. Overall, the authors' perception is that the case study lacked the impact intended — it did not come 'alive' to the students. Interest in the case study material appeared muted. Two related objectives of the case study were to introduce students to the complexity of 'real world' situations and the potential for multiple solutions to certain issues. As a consequence of the lack of engagement by students, the lecturers were unclear whether these objectives were achieved. The following section outlines possible reasons for these perceptions.

1 *Integration in the Lecture/Workshop*

The particular case study scenario was incorporated each week in either: (i) the two-hour lecture itself; or (ii) the workshop run the next day. With respect to incorporation in the lecture, at the commencement of each class the lecturer briefly outlined the scenario prior to the discussion of the substantive material for that week. The intent was that, as the lecture progressed, students would connect the lectured material to issues in the case study. Through the lecture, relevant aspects of the case study were covered, by either seeking 'advice' (i.e. input) from the class for the client, or the lecturer applying the lecture material to problems in the case study. Class input proved to be limited, primarily due to the fact that the amount of material to be covered in the lecture reduced the opportunities for students to engage during the class. Time pressures meant that the lecturer often applied the lectured material to the relevant issues in the case study without seeking student input. The size of the typical lecture — with attendance at usually between 50–70 students — would also have acted as a disincentive to all but the most confident student(s) to interact when such opportunities arose. Students therefore had limited opportunity to practice their problem-solving and analytical skills in the class setting.

Alternatively, where it was considered that there was insufficient lecture time to consider the case study, it was instead incorporated into the workshop either at the commencement or conclusion (for example, the last ten minutes) of the workshop. Similar to the observation above, discussion of the case study in the workshop also proved to be somewhat rushed, largely because it was in addition to the pre-set questions which had not been reduced to take into account the case study material — this impacted the ability for students to engage, as did the workshop size (again, 50–70 students generally). When the workshop materials (and questions) were compiled at the commencement of the course, it was not intended that the workshop would also be used for the case study. It had initially also been (perhaps optimistically) thought that students would be familiar with the case study facts presented week-on-week so that any workshop discussion would be free-flowing and fruitful. In retrospect, it would appear some students may not have spent much (if any) time considering the case study facts either prior to the lecture or the workshop.

2 *'Just Too Much Material'*

Related to Part IV C 1 above, the lecturers either made no — or only modest — reductions in the lecture material presented in class (compared to previous years) to accommodate the case study. This was based on the mistaken belief that there would be sufficient time to weave — and apply — the case study through the lecture. As indicated, this often proved difficult which meant there was insufficient time for engagement with the students by the lecturers and for 'answers' to the pertinent issues in the case study to be developed with student input in the lecture. As noted in Part IV C 3, in some weeks the case study was instead considered in the workshop alongside the pre-set workshop questions and perhaps, not surprisingly, this level of content again caused similar time pressure issues.

Ideally, to encourage interaction with the material and mitigate issues with the class size referred to earlier, students should have been given a few minutes to discuss particular issues with those around them (informal and impromptu groups) before reconvening to work through the issues. The limitations of the tiered, fixed-seat lecture theatre structure used for the lectures and workshops would have made this challenging, if not impossible.

3 *'Case Study' and 'Case Law'*

At the outset, the lecturers made it clear to differentiate the case study (i.e. as fictitious) from case law. Past experience has shown that even 'real life' examples provided in class to assist students can be confused as case law and subsequently referred to as judicial authority in tests and exams. The authors believe that students understood the difference with the case study not being referred to as authority in the workshop discussion, tests, or exam. Furthermore, the authors do not believe — although they cannot conclusively verify — that students used the case study as 'authority' in the tutorial classes.

D *Recommendations and Limitations of the Extended Case Study*

More careful and consistent integration of the extended case study in future iterations of ACCT254 would be beneficial. This could include incorporating questions for students

(pre-prepared by the lecturers) on the material in the individual case study scenarios into the lectures or workshops (see below) each week so that students are actively involved in the extended case study throughout the course. Thought-provoking questions encourage student involvement, arouse curiosity and develop the affective component of critical thinking.[93] This changes students' goals from merely memorising material to pursuing knowledge to answer relevant questions.[94] In addition, students' active involvement is consistent with the incorporation of a deep learning approach supporting generic skills development.

A clear limitation to utilising the extended case study in the ACCT254 course was that the development of the case study material, as well as its implementation in classes, took more time than expected which meant that, in some instances, complete coverage of the course material in lectures (in comparison to previous years) could not be achieved or more often, the case study itself was not adequately considered. In respect of this latter issue, students are provided with full lecture notes (in Microsoft Word format) so, along with the course textbook, there is opportunity in the future for the lecturers — with more planning — to reduce coverage of certain material in the actual class to allow more time to consider the case study issues.

Turning to the concern in Part IV C 1 above, the case study could be fully integrated into the workshop. Like the lectures, the workshops are recorded and have a similar level of engagement (and attendance). To achieve integration, the current number of pre-set questions considered in the workshop could be reduced to allow sufficient time to deal with pre-set case study questions. Case study questions could be dealt with first to ensure they are not 'crowded-out' by the usual pre-set questions (and for which lecturers currently provide solutions after the workshop). Alternatively, the entire workshop could be dedicated to discussing the pre-set case study questions (with students forming groups etc. to do so). This would require a room suitable for this format (and thus, not the tiered seating format utilised). It would also mean that students' only exposure to past test and exam questions (and the ability to learn how to answer these) would be in the tutorials.

The authors (and lecturers) have also considered alternatively incorporating the case study in the tutorials. In addition to the lectures and workshop, students are encouraged to attend a tutorial every week (conducted by contracted staff). Prior to the tutorial, students are required to submit prepared answers to one or more of the tutorial questions for grading ('pass' and 'fail'). The pre-set questions for these classes were retained, i.e. the case study was not incorporated into the tutorial materials. The rationale for this was: (i) these questions have served the course well; and (ii) the material was often based on prior test and exam questions, and therefore give students an indication

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93 Joanne Gainen Kurfiss, 'Critical Thinking by Design' (Essays on Teaching Excellence: Toward the Best in the Academy, Teaching and Learning Center, Santa Clara University, 1989). MN Browne and Stuart M Keeley, *Asking the Right Questions: A Guide to Critical Thinking* (Prentice-Hall, 3rd ed, 1990) also note that 'questions provide a structure for critical thinking that supports a continual, on-going search for better opinions, decisions, or judgements.'

94 Kimmel (n 17) 311.

of the nature of possible future test or exam questions in addition to practice at analysing the issues raised in these questions. Accordingly, the authors (and lecturers) believe that it is appropriate to continue with this format for the future (i.e. not incorporate the case study into the tutorial materials). This is confirmed by the survey questionnaire finding that only 44 per cent of respondents either '*agree*' or '*strongly agree*' that the extended case study should also be used in ACCT254 tutorials.

Much of the critical thinking literature emphasises the importance of conceptual understanding for effective critical thinking. Relevantly, Woods states that: '[w]e need knowledge or information in order to solve problems, but how we learn information affects how we solve problems. Poor problem solvers have memorized an unstructured set of facts or ideas.'[95] Kimmel suggests one approach to emphasising conceptual relations is to have students provide a brief summary of the three most important concepts presented that day and write one question to be answered in the next lecture. The lecturer should collect these at the end of the class and review them. The lecturer then begins the next lecture by summarising the most important concepts discussed in the previous lecture and addressing the written questions posed by students. This exercise encourages concentration on conceptual organisation of the material, rather than just details.[96] A similar approach could potentially be adopted (via online submissions by students) in the future integration of the extended case study in the ACCT254 course. Students are currently required to submit answers to specific questions for grading in advance of the weekly tutorials.[97] A simple extension of this could require students to submit a reflection on aspects of the case study online along with answering specific case study question(s), both of which would be considered in the next workshop (or lecture). This submission could be graded and in addition to, or in place of, the existing requirement to submit tutorial answers.

Another approach to imbed the case study would be to have it subject to assessment, perhaps by way of an online quiz where a student has the option to select one of several answers to an aspect of the case study. This would enhance the value placed on the case study by the student as it would be weighted toward a final grade. An option may be to allow only one opportunity to select the correct answer, thereby fostering the need of the student to research and reflect prior to selecting their chosen option. In addition, or alternatively, the tests and exams could include assessment(s) based on the extended case study material and thus, increase students' perceived 'usefulness' of the extended case study approach.[98]

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95 DR Woods, 'How Might I Teach Problem Solving' in James E Stice (ed), *Developing Critical Thinking and Problem-Solving Abilities* (Jossey-Bass, 1st ed, 1987) 91.

96 Kimmel (n 17) 313.

97 These are graded 'pass' (equivalent to 1 per cent for each submission) or 'fail' and contribute up to a maximum of 10 per cent of the course grade. Tutors then work through these questions in tutorials.

98 Kimmel (n 17) further states that 'including exam questions identified as critical thinking problems has the additional benefit of demonstrating to the student that critical thinking is a required objective of the course and that the student must take it seriously': at 314.

The student survey questionnaire found that approximately half of the respondents perceived the extended case study as interesting to them, and the same number believed that the extended case study made their learning experience in ACCT254 more enjoyable. This may indicate that, for the remainder of the respondents, a possible limitation regarding student resistance to 'new approaches to learning'[99] exists. To encourage students' acceptance of the extended case study, the objectives of the case study should be explicitly outlined to students, for example, in the course outline and emphasised throughout the course.[100]

As noted in Part II of this paper, Weil et al[101] found that females show less favourable perceptions towards the use of case studies than males. They posit this could be due to learning style differences or issues specific to their case study (for example, the study group dynamics, or females did not perceive the case study material as encouraging them to ask questions), and/or other factors.[102] While the ACCT254 case study revolved around two main characters, one being female (Jacinda Bloom), the owner of a very profitable landscape design business and also a successful investor (in cryptocurrency and shares), the main focus of the case study was Tomas Bloom, an engineer, who invented *inter alia* a battery for electric bikes (or e-bikes). To counter the potentially lower perceptions among females of the usefulness of case studies, in the future the ACCT254 case study could be modified to have greater resonance with — and appeal to — females, by centring the scenarios on Jacinda's activities (which would also be broadened and expanded).[103]

Upon reflection, a 'Client File' could be made available at the start of the course without specifically discussing the Client File scenario during lectures and students would be informed that an aspect of the course assessment would be linked to the Client File scenario. The ACCT254 course is conducted by way of 'closed book' assessment (apart from students being able to take in a Legislation Handbook). As such, a 'Client File' type of teaching method might be better suited to a more advanced taxation class, such as the ACCT358 (Advanced Taxation) course where the students are treated more as practitioners for assessment purposes with the test and exam being 'open book' with a higher level of application to a tax problem being expected.

A limitation of the case study adopted in ACCT254 appeared to be that consistency in its use and application differed amongst the three lecturers in the course. This may be in part due to the particular weekly topic being lectured (and corresponding level of content). In addition, student questions asked during a lecture can impact on lecture time

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99 Ibid 315.

100 Ibid 314.

101 Weil et al (n 29) 138.

102 Ibid 134.

103 In terms of participation in the survey, it was pleasing that the female students had the highest participation rate at 49 per cent (compared to males (47 per cent) and gender diverse (4 per cent)).

management. However, this consistency issue may lessen over time as the lecturers become more familiar with utilising the case study method.

V CONCLUDING OBSERVATIONS

The case study approach is claimed to deliver learning objectives such as the development of analytical, judgemental and other transferable or generic skills. However, the accounting education literature indicates that 'traditional teaching methods and heavy content-oriented workloads, leads to learning behaviours that are inconsistent with the development of generic skills.'[104] Conventionally, taxation courses are taught through the presentation of individual topics. However, areas of taxation are interrelated and do not exist independently of one another. Accordingly, this study has sought to explore the effectiveness of using an extended case study in the teaching of a second-year taxation course, ACCT254, at the University of Canterbury, New Zealand. The utilisation of the extended case study was intended to complement, and not replace the existing teaching methods used in the ACCT254 taxation course. An extended case study (based on a sole-trader business) was developed and implemented in the lectures of the above-mentioned course over a 12-week semester. The effectiveness of the extended case study was measured in three ways using both quantitative and qualitative measures.

The findings from the student survey questionnaire suggest that, consistent with the case study literature,[105] the use of the extended case study was effective (i.e. majority of the respondents either agreed or strongly agreed) in developing students' critical thinking and problem-solving skills. Also consistent with prior research, the extended case study was effective in presenting realistic (taxation) scenarios to students. The extended case study also helped students to identify relevant taxation issues, apply relevant case law and/or legislation to particular scenarios, and to learn that taxation issues are interrelated. However, the extended case study was less effective in improving students' abilities to deal with uncertainty, with approximately half of the respondents either agreeing or strongly agreeing that this was a benefit. This potentially suggests that taxation students at stage two (the first full semester taxation paper) are not used to the amount of information included and the way facts are presented in the context of learning with case studies in taxation, compared to traditional teaching methods which draw heavily on lecturing and structured sets of facts.

While the extended case study achieved the aims of presenting realistic taxation scenarios, enhancing students' understanding of how tax relates to the real world and illustrating interrelationships between tax topics, the findings of the student survey questionnaire indicate that the effectiveness of the extended case study as a teaching tool could potentially be improved through the more careful and consistent integration of the extended case study in future iterations of ACCT254. For example, this could include incorporating questions for students on the material in individual case study scenarios

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104 Boyce et al (n 4) 43.

105 See, eg, Wines et al (n 1); Hassall, Lewis and Broadbent (n 2); Campbell and Lewis (n 17); Kimmel (n 17); Weil et al (n 29); Weil, Oyelere and Rainsbury (n 29).

into weekly lectures, so that students are actively involved in the extended case study throughout the course. This is consistent with the incorporation of a deep learning approach that supports generic skills development. Students' perceived usefulness of — and thus their active engagement with — the extended case study during the course could also be enhanced by including assessment of the extended case study material in the term tests and final exam. In addition, and subject to how the case study is integrated in the future, there needs to be careful consideration of the content to be covered in class to ensure that there is sufficient time for the students to engage with the extended case study.

The quantitative analysis of the students' term test and final examination results show that, overall, students' performance in the year that the extended case study was utilised was higher compared to the years in which it was not. The pass rate and the mean mark achieved was higher in 2019 for term test one and the final examination, compared to the previous three years. Although these findings may provide some evidence of the effectiveness of the extended case study as a teaching tool in taxation in improving students' performance, the findings cannot be completely relied upon due to the possible influence of factors such as differences between years in the cohorts of students, differences in the material assessed, differences in the specific test and examination questions and differences in the marking of the assessments. Accordingly, data for further years in which the extended case study is utilised would be beneficial to potentially confirm or refute these findings.

Overall, the implementation of the case study for the 2019 cohort of ACCT254 students gave useful insight. The study of taxation can be fraught with challenges due to the amount of technical and complex material required to be taught to satisfy academic requirements. Therefore, it was pleasing that the extended case study was better received by students, as indicated by the student questionnaire, than the lecturers had expected (due to the lack of apparent engagement with the extended case study and time pressures faced in lectures and the workshops).

It is also important to view the case study from the perspective of the student. A student may have multiple assessments over a variety of courses and with many students being very time sensitive (perhaps due to the challenge of balancing part-time work alongside their study demands), they are prone to make choices that may, at times, be difficult. One choice that would be understandable for a 'time poor' student is 'if it is not assessed, then is it important to me?' Therefore, as indicated above, from an academic perspective, to gain a satisfactory level of benefit for — and interaction from — the student, an aspect of the course assessment should be linked to the case study. It was also an interesting — albeit unexpected — finding that some students found the case study material 'too big' or confusing.

Finally, in the workplace, graduates will need to develop skills to distil what information is relevant with respect to their clients, i.e. to sift the 'wheat from the chaff'. This is a strength of the case study from a pedagogical perspective. If the authors were to extend the case study format to another course (perhaps even adopting a 'Client File' approach), they would therefore ensure that it contained irrelevant, as well as relevant, material in the client facts — thereby mirroring a real-world client engagement.

APPENDIX 1

ACCT254 EXTENDED CASE STUDY STUDENT SURVEY QUESTIONNAIRE

The following survey asks about your learning experience with the extended case study used in ACCT254 this semester. Please select the response which **BEST** represents your agreement with each statement below.

The survey will take approximately 10 minutes to complete. **Completing and submitting the survey will be taken as consent for the data to be used in this project**.

Section 1:

	The extended case study:	**Strongly Disagree**	**Disagree**	**Neutral**	**Agree**	**Strongly Agree**
1.	Helped develop my critical thinking skills (e.g. identifying and evaluating the relevant information).	1	2	3	4	5
2.	Helped develop my problem-solving skills.	1	2	3	4	5
3.	Helped me to apply relevant case law and/or legislation to particular scenarios.	1	2	3	4	5
4.	Helped me to answer the questions in the ACCT254 workshops.	1	2	3	4	5
5.	Helped me to answer the questions in the ACCT254 tutorials.	1	2	3	4	5
6.	Helped me to prepare for the ACCT254 term tests.	1	2	3	4	5

Please specify any other <u>skills</u> that you believe that you have acquired or developed through learning with the extended case study in ACCT254:

Section 2:

	The extended case study:	**Strongly Disagree**	**Disagree**	**Neutral**	**Agree**	**Strongly Agree**
7.	Presented realistic taxation scenarios.	1	2	3	4	5
8.	Was interesting to me.	1	2	3	4	5
9.	Helped me to learn that taxation issues are interrelated (i.e. do not exist independently of one another).	1	2	3	4	5
10.	Improved my ability to identify relevant taxation issues.	1	2	3	4	5

11.	Improved my ability to recognise and deal with uncertainty.	1	2	3	4	5
12.	Introduced me to the professional context of advising in taxation.	1	2	3	4	5

Please specify any other benefits of learning with the extended case study that you can think of:

Section 3:

	The extended case study:	**Strongly Disagree**	**Disagree**	**Neutral**	**Agree**	**Strongly Agree**
13.	Was easy to read and understand.	1	2	3	4	5
14.	Made my learning experience in ACCT254 more enjoyable.	1	2	3	4	5
15.	Should continue to be used in ACCT254 lectures in the future.	1	2	3	4	5
16.	Should be extended to also being used in the ACCT254 tutorials.	1	2	3	4	5
17.	Should also be used in advanced taxation courses.	1	2	3	4	5

Please specify any difficulties in learning with the extended case study that you have experienced:

Please provide any additional comments that you have about the extended case study in ACCT254 (e.g. including any suggestions for improvements):

Demographic Questions:

1. Gender identity: Male ___ Female ___ Gender Diverse ___
2. Ethnicity: NZ European/Pākehā ___ Māori ___ Pasifika ___ Asian ___ Other European ___ Other: ___
3. Is English your first language? Yes__ / No__
4. Do you have accounting/taxation related work experience? No__ / Yes __ (please elaborate:_____)

REFERENCES

A *Articles/Books/Reports*

Adler, Ralph W, Rosalind H Whiting and Kate Wynn-Williams, 'Student-Led and Teacher-Led Case Presentations: Empirical Evidence About Learning Styles in an Accounting Course' (2004) 13(2) *Accounting Education: An International Journal* 213

Ballantine, Joan A and Patricia McCourt Larres, 'A Critical Analysis of Students' Perceptions of the Usefulness of the Case Study Method in an Advanced Management Accounting Module: The Impact of Relevant Work Experience' (2004) 13(2) *Accounting Education* 171

Barkman, AI, 'Teaching and Educational Note: The Use of Live Cases in the Accounting Information Systems Course' (1998) 16(3) *Journal of Accounting Education* 517

Bell, Emma, Alan Bryman and Bill Harley, *Business Research Methods* (Oxford University Press, 5th ed, 2018)

Bonk, Curtis Jay and G Stevenson Smith, 'Alternative Instructional Strategies for Creative and Critical Thought in the Accounting Curriculum' (1998) 16(2) *Journal of Accounting Education* 261

Bonner, Sarah E, 'Choosing Teaching Methods Based on Learning Objectives: An Integrative Framework' (1999) 14(1) *Issues in Accounting Education* 11

Boyce, Gordon, Sarah Williams, Andrea Kelly and Helen Yee, 'Fostering Deep and Elaborative Learning and Generic (Soft) Skill Development: The Strategic Use of Case studies in Accounting Education' (2001) 10(1) *Accounting Education* 37

Breton, Gaétan, 'Some Empirical Evidence on the Superiority of the Problem-Based Learning (PBL) Method' (1999) 8(1) *Accounting Education: An International Journal* 1

Browne, MN and Stuart M Keeley, *Asking the Right Questions: A Guide to Critical Thinking* (Prentice-Hall, 3rd ed, 1990)

Campbell, Jane E and William F Lewis, 'Using Cases in Accounting Classes' (1991) 6(2) *Issues in Accounting Education* 276

Christensen, Carl Roland and Abby J Hansen, *Teaching and the Case Method* (Harvard Business School, 2nd ed, 1987)

Dennis, Ian, 'OK in Practice – and Theory: The Experience of Using an Extended Case Study in Auditing Education: A Teaching Note' (2003) 12(4) *Accounting Education* 415

Easton, Geoff, *Learning from Case Studies* (Prentice-Hall, 2nd ed, 1992)

Fulmer, William E, 'Using Cases in Management Development Programmes' (1992) 11(3) *Journal of Management Development* 33

Gow, Lyn, David Kember and Barry Cooper, 'The Teaching Context and Approaches to Study of Accountancy Students' (1994) 9(1) *Issues in Accounting Education* 118

Hassall, Trevor, Sarah Lewis and Mike Broadbent, 'Teaching and Learning Using Case Studies: A Teaching Note' (1998) 7(4) *Accounting Education: An International Journal* 325

Hayes, Sharon, Brett Freudenberg and Deborah Delaney, 'Role of Tax Knowledge and Skills: What are the Graduate Skills Required by Small to Medium Accounting Firms' (2018) 13 *Journal of the Australasian Tax Teachers Association* 152

Healy, Margaret and Maeve McCutcheon, 'Teaching with Case Studies: An Empirical Investigation of Accounting Lecturers' Experiences' (2010) 19(6) *Accounting Education: An International Journal* 555

Inman, BC, A Wenzler and PD Wickert, 'Square Pegs in Round Holes: Are Accounting Students Well-Suited to Today's Accounting Profession?' (1989) 4(1) *Issues in Accounting Education* 29

Kimmel, Paul, 'Framework for Incorporating Critical Thinking into Accounting Education' (1995) 13(3) *Journal of Accounting Education* 299

Knechel, WR, 'Using the Case Method in Accounting Instruction' (1992) 7(2) *Issues in Accounting Education* 205

Kraal, Dianne and Andrew Coleman, 'Teaching Legal Studies in Business Degrees: A Review of a Method and its Practice' (2019) 44(11) *Australian Journal of Teacher Education* 18

Libby, PA, 'Barriers to Using Cases in Accounting Education' (1991) 6(2) *Issues in Accounting Education* 193

Lightner, Teresa and Robert C Ricketts, 'Tax Implications of Participating in Reality Television' (2007) 22(2) *Issues in Accounting Education* 247

Lipe, MG, 'Using Cases Published in Issues in Accounting Education: Categories and Topics at a Glance' (2006) 21(4) *Issues in Accounting Education* 417

McKerchar, Margaret, *Design and Conduct of Research in Tax, Law and Accounting* (Thomson Reuters, 2010)

Metcalf, Mark, Kevin Stocks, Scott L Summers and David L Wood, 'Citation-Based Accounting Education Publication Rankings' (2015) 33(4) *Journal of Accounting Education* 294

Mohrweis, LC, 'Teaching Audit Planning and Risk Assessment: An Empirical Test of the Dermaceutics Instructional Resources' (1993) 8 *Issues in Accounting Education* 391

The National Committee of Inquiry into Education, *Higher Education in the Learning Society: Report of the National Committee (Dearing Report)* (1997)

Saunders, Murray and Joan Machell, 'Understanding Emerging Trends in Higher Education Curricula and Work Connections' (2000) 13(3) *Higher Education Policy* 287

Sawyer, Adrian J, Stephen R Tomlinson and Andrew J Maples, 'Developing Essential Skills Through Case Study Scenarios' (2000) 18(3) *Journal of Accounting Education* 257

Benson P Shapiro, *Hints for Case Teaching* (Harvard Business School Publishing Division, 1984)

Slack, Richard, Jan Loughran and Kirsty Abrahams, 'Corporate Associate Partnerships: Practitioners' Involvement in the Delivery of an Auditing Course Based on a Case-Study: A Teaching Resource' (2014) 23(3) *Accounting Education: An International Journal* 262

Sonnier, Blaise M, Cherie J Hennig, John O Everett and William A Raabe, 'Reporting of Book-Tax Differences for Financial and Tax Purposes: A Case Study' (2012) 30(1) *Journal of Accounting Education* 58

Sonnier, Blaise M, 'Utopia Home Health, Inc.: A Case Study on C Corporation Taxation from Cradle to Grave' (2010) 25(4) *Issues in Accounting Education* 755

Walker, Christopher, 'Teaching Policy Theory and its Application to Practice Using Long Structured Case Studies: An Approach that Deeply Engages Undergraduate Students' (2009) 20(2) *International Journal of Teaching and Learning in Higher Education* 214

Weil, Sidney, Peter Oyelere and Elizabeth Rainsbury, 'The Usefulness of Case Studies in Developing Core Competencies in a professional Accounting Programme: A New Zealand Study' (2004) 13(2) *Accounting Education* 139

Weil, Sidney, Peter Oyelere, Joanna Yeoh and Colin Firer, 'A Study of Students' Perceptions of the Usefulness of Case Studies for the Development of Finance and Accounting-Related Skills and Knowledge' (2001) 10(2) *Accounting Education* 123

Woods, DR, 'How Might I Teach Problem Solving' in James E Stice (ed), *Developing Critical Thinking and Problem-Solving Abilities* (Jossey-Bass, 1st ed, 1987)

Wynn-Williams, Kate, Rosalind H Whiting and Ralph W Adler, 'The Influence of Business Case Studies on Learning Styles: An Empirical Investigation' (2008) 17(2) *Accounting Education* 113

B *Other*

Chartered Accountants Australia and New Zealand, 'CA Program Structure' (Web Page, 2020) <https://www.charteredaccountantsanz.com/become-a-member/course-descriptions/chartered-accountant>

Chartered Accountants Program, *CAP119 Module Outline* (2019)

Crawford, M and J Keddie, 'Embedding Generic skills in an Accounting Curriculum' (Discussion Paper No 1, British Accounting Association Accounting Education Special Interest Group Working Paper Series, 1995)

Crombie, Neil and Beverley Lord, 'Using the Case Study Method to Develop Generic Skills: An Analysis of Student and Tutor Perceptions' (Conference Paper, British Accounting Association Annual Conference, 21–23 April 2009)

Harvard Business School, 'Making a Case: The Birth of an HBS Case Study' (2001) Enterprise Newsletter

International Federation of Accountants, International Education Standard 3, Initial Professional Development – Professional Skills (2015)

Kurfiss, Joanne Gainen, 'Critical Thinking by Design' (Essays on Teaching Excellence: Toward the Best in the Academy, Teaching and Learning Center, Santa Clara University, 1989)

Wines, G, G Carnegie, G Boyce, R Gibson, *Using Case Studies in the Teaching of Accounting* (Australian Society of Certified Practising Accountants, Deakin University, 1994)

Wu, Julia, 'Using Case Studies in Accounting Education – A Re-Examination' (Conference Paper, New Zealand Applied Business Education Conference, 1 September 2010)

Wu, Julia, Using Complex Case Studies to Teach Law and Accounting: Project Report (2019)

ANALYSIS OF TAX EDUCATION AND TAX KNOWLEDGE: SURVEY ON UNIVERSITY STUDENTS IN INDONESIA

BERNARDUS BAYU RYANTO PRAKOSO PUTRO* AND CHRISTINE TJEN**

ABSTRACT

This study consists of qualitative research and quantitative research. This study conducts qualitative research by using interviews with the Indonesian Directorate General of Taxation ('DGT') to analyse the tax inclusion programs and perceptions of the DGT regarding public tax knowledge and public tax education. According to the DGT, public tax knowledge is still lacking. In terms of tax education, the DGT has said that tax education is still unstructured. To overcome this problem, the DGT will implement a tax inclusion program for the next 30–45 years. In addition to qualitative research, this study also conducts quantitative research, namely questionnaire survey methods on university students in Indonesia, with the aim to ascertain whether there is a significant difference related to the level of tax knowledge, student perceptions regarding the importance of tax education, and student perceptions regarding the need for tax education among those students who have received tax education and those students who have not received tax education. In line with the hypothesis, the results show that there is a significant difference between students who have received tax education and students who have not received tax education in terms of the level of tax knowledge possessed. Furthermore, with respect to the perception regarding the need for tax education, there is a significant difference between students who have received tax education and those who have not received tax education.

Keywords: tax education, tax knowledge, tax perceptions, tax inclusion

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I INTRODUCTION

The low tax ratio in Indonesia, compared to regional standards, cannot be separated from the taxation system used in Indonesia which is a self-assessment system. This system allows the community to be disobedient as it requires that the public understand the concept of taxation.[1] In other words, in a self-assessment system, to improve tax compliance, taxpayers are expected to have tax knowledge in order to calculate tax debt correctly.[2]

The level of tax literacy is influenced by the tax education received.[3] The higher the level of tax education, the higher the level of tax literacy will be. Further research has also found that taxation knowledge from students who have completed tax-related subjects — both in the form of full-time and extramural study programs — tends to be higher.[4] In the form of a full-time study program, Follow-up Masters students are significantly better than undergraduate students.

Taxation knowledge has a significant impact on tax compliance, even though the level of taxation knowledge of respondents varies.[5] Relevantly, a study conducted in Africa found that tax compliance was influenced by tax knowledge.[6] In other words, tax education can shape tax knowledge so that tax education can improve tax compliance indirectly.

Generally, tax education itself is only taught in accounting, taxation or business majors, and only at the tertiary level. This leads to lower student taxation knowledge from non-accounting, non-taxation or non-business backgrounds. A study of non-accounting faculty students in Malaysia found that only 23.7 per cent of respondents had a high level of taxation knowledge.[7] On the other hand, a study conducted on taxation students in Prague, Czech Republic, suggests that more than 50 per cent have understood taxation, including students who only undertook basic taxation classes.[8] Accordingly, this indicates that the level of student tax knowledge without tax education tends to be low, and that basic tax education can increase student tax knowledge.

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1 Natrah Saad, 'Tax Knowledge, Tax Complexity and Tax Compliance: Taxpayers' View' (2014) 109 *Procedia – Social and Behavioral Sciences* 1069.

2 Anis Barieyah Mat Bahari and Lai Ming Ling, 'Introducing Tax Education in Non-Accounting Curriculum in Higher Education: Survey Evidence' (2009) 7(1) *Journal of Financial Reporting and Accounting* 37.

3 Michaela Moučková and Leoš Vítek, 'Tax Literacy' (2018) 66(2) *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* 553.

4 Beáta Blechová and Šárka Sobotovičová, 'Analysis of Tax Education in a Business School: A Case Study' (2015) 24(2) *Periodica Polytechnica Social and Management Sciences* 113.

5 Mohd Rizal Palil, 'Tax Knowledge and Tax Compliance Determinants in Self Asssessment System in Malaysia' (PhD Thesis, University of Birmingham, 2010).

6 Zelalem Berhane, 'The Influence of Tax Education on Tax Compliance Attitude' (MSc Thesis, Addis Ababa University, October 2011).

7 Bahari and Ling (n 2).

8 Moučková and Vítek (n 3).

Although tax knowledge among students without tax education tends to be low, it was found that around 62 per cent of research respondents who are non-accounting students have medium-high tax knowledge.[9] In addition, another study found no significant difference between students in extramural study programs who had completed tax-related courses and those who had not yet completed tax-related subjects.[10] This implies that there is a possibility that the tax knowledge of students who have received tax education and those who have not received tax education does not differ significantly.

Furthermore, although students who have never received tax education tend to have lower tax knowledge, it has been found in previous studies that the majority of respondents who have not received tax education have a positive perception of taxation itself. Relevantly, a study conducted by Bahari and Ling found that 64 per cent of respondents who are non-accounting faculty students have the desire to study taxation.[11] In addition, the majority of respondents thought that tax education must be taught at the undergraduate level. In one study of accounting and non-accounting students in Malaysia, it was found that more than 90 per cent of the respondents thought that tax education was important and relevant, and should be introduced at the undergraduate level.[12] However, students' perceptions from business majors towards the importance of tax education tend to be higher than students' perceptions from non-business majors, as regards the importance of tax education[13].

Tax knowledge can be obtained through self-learning, taking formal education and/or taking informal education. Unfortunately, not everyone wants to learn about taxation. Most people consider taxes as a burden that should be avoided.[14] In Indonesia, tax knowledge is still low. This can be seen from the lack of education concerning taxation being conducted early on. This lack of taxation knowledge can affect Indonesia's tax ratio. The level of tax knowledge and tax education is very important to ensure good tax administration.[15] Therefore, to increase Indonesia's tax ratio, the DGT is trying to implement the Tax Awareness Inclusion program.

The Tax Awareness Inclusion program is one of the long-term programs that has been implemented by the DGT since 2014. This program aims to increase tax awareness for many parties, such as students at primary, secondary and higher education levels,

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9 Halim et al, 'Understanding and Attitudes Towards Self-Assessment Taxation System: The Case of Malaysian Non-Accounting Undergraduates Students (2015) 6(2) *Global Review of Accounting and Finance* 110, 110–112.

10 Blechová and Sobotovičová (n 4).

11 Bahari and Ling (n 2).

12 Mohd Amran Mahat and Lai Ming Ling, 'Featuring Tax Education in Non-Accounting Curriculum: Survey Evidence' (Conference Paper, ZBW - Leibniz Information Centre for Economics, 2011).

13 Rini Hastuti, 'Tax Awareness and Tax Education: A Perception of Potential Taxpayers' (2014) 5(1) *International Journal of Business, Economics and Law* 83.

14 Ibid.

15 Mohd Rizal Palil, Mohd Rusyidi Md Akir and Wan Fadillah Bin Wan Ahmad, 'The Perception of Taxpayers on Tax Knowledge and Tax Education with Level of Tax Compliance: A Study the Influences of Religiosity' (2013) 1(1) *ASEAN Journal of Economics, Management and Accounting* 118.

including teachers and lecturers. In other words, the program's target is all levels of education. Tax inclusion will be carried out by integrating tax awareness material into four main aspects, namely: curriculum, learning, book and student activities. The purpose of the Tax Awareness Inclusion program is to improve the quality of tax education and tax knowledge of students, especially university students. University students, as potential taxpayers, are expected to have a broader perspective in considering the importance of taxation.[16]

The focus of this study is to determine the differences in the level of tax knowledge between students who have received formal or non-formal tax education, and students who have never received tax education. In addition, another focus of this study is to ascertain students' perceptions regarding the importance of tax knowledge and students' perceptions regarding the need to learn taxation. The perception of the DGT regarding tax knowledge and tax education in the community is also an area of focus in this research.

Against this background, the objectives of this study are detailed below.

1. To analyse the DGT's tax inclusion program and its perception of the existing level of public tax knowledge and tax education.
2. To analyse the differences in the level of tax knowledge between students who have received formal or non-formal tax education, and students who have not received formal or non-formal tax education.
3. To analyse the differences in the level of perception regarding the importance of tax education between students who have received tax education both formally or informally, and students who have not received tax education both formally or informally.
4. To analyse the differences in the level of perception regarding the need for tax education between students who have received tax education both formally or informally, and students who have not received tax education both formally or informally.

In light of the foregoing discussion, the next part of this paper will proceed to contextualise relevant literature in the context of this study.

II THEORETICAL REVIEW

This part briefly reviews some relevant literature and studies concerning tax education, tax knowledge and literacy, and tax perceptions before outlining the hypotheses of this study.

[16] Hastuti (n 13).

A *Tax Education*

Tax education is one of the most effective tools to encourage taxpayers to be more tax-compliant.[17] If taxpayers can understand taxation concepts, they will be more tax-compliant.[18]

Education, in general, is divided into three categories, i.e. formal education, non-formal education, and informal education.[19] In the context of this study, formal tax education is regarded as tax education that a person receives in primary, secondary and/or higher education. Non-formal tax education is then tax education that a person receives through taxation courses. Informal tax education is tax education that is received outside of formal and non-formal education. The tax education used in this study is only limited to formal and non-formal tax education and therefore, students who receive informal tax education are not considered to have received tax education.

B *Tax Knowledge*

According to United Nations Educational, Scientific and Cultural Organization, 'literacy' is the ability to identify, understand, interpret, make, communicate and count, using printed and written materials related to various contexts.[20] The basic definition of literacy is important for the emergence of tax literacy, in other words the ability to read and write are crucial to understanding taxation.[21] Tax literacy has two goals: first, to provide tax-related information; and secondly, to provide an explanation regarding taxation in the domestic, regional and international scope, and the effect of tax on those who have information.[22] 'Tax literacy' can be defined as knowledge that needs to be possessed in order to effectively manage issues related to personal taxation.[23] Relevantly, Blechová and Sobotovičová in their research on tax knowledge, measured tax knowledge by asking questions related to personal income tax, such as tax rates, tax credits, and tax allowances. In addition to questions related to individual taxes, questions related to consumption tax (environmental tax) and environment (environmental tax) are also

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17 Chang-Gyun Park and Jin Kwon Hyun, 'Examining the Determinants of Tax Compliance by Experimental Data: A Case of Korea' (2003) 25 *Journal of Policy Modeling* 673.

18 Mohmad Sakarnor Bin Deris, Norkhazimah Bt Ahmad and Marziana Bt Hj Mohamad, 'Perceptions of Taxpayers with Level of Compliance: A Comparison in the East Coast Region' (2010) 1(1) *Journal of Global Business and Economics* 241.

19 Sarah Eaton, 'Formal, Non-Formal and Informal Learning: What are the Differences?' (Newsletter, Spring Institute of Intercultural Learning, 2010).

20 United Nations Educational, Scientific and Cultural Organization, 'Education for All Global Monitoring Report: Understandings of Literacy' (Report, 2006) 147–159 <http://www.unesco.org/education/GMR2006/full/chapt6_eng.pdf>.

21 Dajana Cvrlje, 'Tax Literacy as an Instrument of Combating and Overcoming Tax System Complexity, Low Tax Morale and Tax Non-Compliance' (2015) 4(3) *The Macrotheme Review* 156.

22 A Waris and H Murangwa, 'Utilising Tax Literacy and Societal Confidence in a State: The Rwandan Model' (2012) *University of Nairobi Law Journal*.

23 Puneet Bhushan and Yajulu Medury, 'Determining Tax Literacy of Salaried Individuals - An Empirical Analysis' (2013) 10(6) *IOSR Journal of Business and Management* 76.

given but are only limited to general knowledge related to certain products.[24] Bahari and Ling measured the level of tax knowledge of research subjects by providing 10 questions related to respondents' understanding of the Malaysian self-assessment system and knowledge related to personal taxation, such as relief and rebates.[25] Moučková and Vítek surveyed the level of tax knowledge by providing two questionnaires; the first questionnaire contained questions related to personal income tax and the second contained questions related to value added tax.[26] The questions focused on practical knowledge and abilities.

Based on several previous journals mentioned above, in this study, respondents' tax knowledge will be measured by giving questions related to basic tax knowledge, such as knowledge related to the Indonesian self-assessment taxation system and individual taxes. The questions will use the basis of statutory regulations related to general provisions on taxation and income tax. The questions given are related to the material in the textbook issued by the DGT in the Tax Awareness Inclusion program.

C *Tax Perception*

'Perception' means a vision, response, or understanding.[27] Perception, in psychology, is the process of transforming environmental stimuli into one's experience.[28] This study examines student perceptions of the importance of tax education, and student perceptions regarding the need for tax education.

D *The Tax Awareness Inclusion Program*

Referring to the DGT's *edukasi.pajak.go.id* website, the DGT stated that the Tax Awareness Inclusion program is an effort undertaken by the DGT and the ministries in charge of education to increase the tax awareness of students, teachers and lecturers. This program is carried out by integrating tax awareness material into the curriculum, learning process, and relevant books. In other words, the Tax Awareness Inclusion program aims to improve the quality of tax education and public tax knowledge. Relevantly, the Tax Awareness Inclusion program has four strategies, namely strategies in the curriculum, strategies in books, strategies in learning, and strategies in student activities.

E *Hypotheses*

Berhane found that respondents had a higher level of tax knowledge when they had received tax education, rather than when they had not received tax education.[29] Blechová

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24 Blechová and Sobotovičová (n 4).

25 Bahari and Ling (n 2).

26 Moučková and Vítek (n 3).

27 John M Echols and Hassan Shadily, *English-Indonesian Dictionary* (PT Gramedia Pustaka Utama, 1975).

28 Wiwien Dinar Prastiti and Susantyo Yuwono, *Psikologi Eksperimen: Konsep, Teori, dan Aplikasi* (Universitas Negeri Muhammadiyah, 2018).

29 Berhane (n 6).

and Sobotovičová found that tax knowledge possessed by full-time study program students who had completed tax-related courses tended to be higher than tax knowledge possessed by students who have not completed tax-related courses.[30] Mohamad et al in their research concluded that the level of undergraduate accounting tax knowledge is different from the level of non-accounting student tax knowledge.[31]

There are several studies that have found that tax knowledge from students who have not received tax education is not low. Halim et al, in their study where the respondents were non-accounting graduates, found that the majority of research respondents (38 per cent) had a low level of tax understanding. Even so, 62 per cent of respondents had a level of tax knowledge that fell into the middle and high level of knowledge groups.[32] In addition, research from Blechová and Sobotovičová found no significant difference between students in extramural study programs who had completed tax-related courses and those who had not yet completed tax-related subjects.[33] Based on previous studies, the first hypothesis of this study is:

H1. The level of tax knowledge of students who have received tax education is different from the level of tax knowledge of students who have not received tax education.

In addition to examining the differences between tax-educated and non tax-educated students, this study also examines differences in tax knowledge levels between male and female students who have received tax education. Relevantly, Fallan found that, in general, there is a significant difference in the level of tax knowledge among male and female students.[34] Based on this, the second hypothesis of this study is:

H2. The level of tax knowledge of male students who have received tax education is different from the level of tax knowledge of female students who have received tax education.

Kamaluddin and Madi found that geographical factors such as city location and infrastructure could be some factors that influence tax literacy.[35] Relevantly, Kamaluddin and Madi conducted a study related to the tax literacy of income-earning individuals in the Malaysian states of Sabah and Sarawak. The study found that there is a significant difference in tax literacy between individuals in these two regions. In addition, they also found that there is a relationship between the level of tax literacy and the work area.

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30 Blechová and Sobotovičová (n 4).

31 Marziana Mohamad et al, 'Accounting vs Non-Accounting Majors: Perception on Tax Knowledge, Fairness and Perceived Behavioural Control' (2013) 3(9) *International Journal of Asian Social Science* 1887.

32 Halim et al (n 9) 110–112.

33 Blechová and Sobotovičová (n 4).

34 Lars Fallan, 'Gender, Exposure to Tax Knowledge, and Attitudes Towards Taxation; An Experimental Approach' (1999) 18 *Journal of Business Ethics* 173.

35 Amrizah Kamaluddin and Nero Madi, 'Tax Literacy and Tax Awareness of Salaried Individuals in Sabah and Sarawak' (2005) 3(1) *Journal of Financial Reporting and Accounting* 71.

Similar research was also conducted by Madi et al in 2010.[36] The results of the study by Madi et al stated that there was a significant difference between individuals in the Sabah and Sarawak regions. As for Indonesia, Java island is considered the most developed island compared to the region outside Java, in terms of its technology, internet access, infrastructures and facilities. Therefore, the third hypothesis of this study is:

H3. The level of tax knowledge of students who have received tax education and whose university is in Java, is different from the level of tax knowledge of students who have received tax education and whose university is outside of Java.

Based on research conducted by Bahari and Ling, the majority of research respondents who were non-accounting students stated that they wanted to learn about taxation.[37] The same thing also appears in the research of Mahat and Ling.[38] Halim et al stated that the majority of respondents agreed that taxation subjects needed to be taught in the non-accounting curriculum.[39]

Hastuti researched the differences in the perceptions of business and non-business students regarding the importance of tax education and the need for tax education at the higher education level.[40] The results showed that there was a significant difference between business and non-business students in terms of their perceptions of the importance of tax education and student needs for tax education. Accordingly, the next two hypotheses of this study are:

H4. The perception of the importance of tax education between students who have received tax education and students who have not yet received tax education is different.

H5. The perception of the need for tax education between students who have received tax education and students who have not yet received tax education is different.

III RESEARCH METHODOLOGY

Part III of this paper proceeds to detail the methodology adopted in this study. Accordingly, it begins by discussing factors related to the population and sample before turning to outline the data collection methods, variables and data processing methods adopted.

A *Population and Sample*

The population selected in this study were university students located in Indonesia. University students were chosen as the subject of this research because they are one of

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36 Nero Madi et al, 'Tax Literacy Among Employees: Sabah and Sarawak's Perspective' (2010) 2(1) *International Journal of Economic* 218.

37 Bahari and Ling (n 2).

38 Mahat and Ling (n 12).

39 Halim et al (n 9).

40 Hastuti (n 13).

the potential taxpayers who are the closest having to complete and/or engage with tax obligations. The sampling process used a non-probability sampling sample design model. In non-probability sampling, elements do not have a definite opportunity to be chosen as a subject.[41] This research succeeded in obtaining 655 respondents, of which 90 respondents were not students. In other words, the relevant data obtained was 565 respondents. Furthermore, this study obtained respondents from 21 provinces located throughout Indonesia.

B *Data Collection Method*

The data collection method used to collect quantitative data in this study was a questionnaire and the research strategy adopted was a survey. Questions used in survey instruments are usually arranged in the form of questionnaires that need to be completed by respondents themselves, in either paper or electronic form.[42] Relevantly, the questionnaires were administered in the form of Google Forms and were distributed online. The questionnaire consisted of 5 parts, namely: (1) personal data; (2) tax education background; (3) level of tax knowledge; (4) perception of the importance of tax education; and (5) perception of the need for tax education.

In section (3) of the questionnaire there were 10 questions used to measure the level of tax knowledge, based on previous studies and based on teaching material in books issued by the DGT. In reference to the research of Madi and Kamaluddin,[43] respondents were classified into three groups based on their score on section (3) of the questionnaire. The groups are depicted in Table 1 below.

TABLE 1: TAX KNOWLEDGE LEVEL[44]

CATEGORY	QUESTIONNAIRE SCORE (SCORE)	DESCRIPTION
Illiterate	24–49% (2.5–4.9)	The ability is relatively low and unable to understand the terms used in the annual tax return.
Literate	50–74% (5–7.4)	Having a standard understanding of taxes but still needs help in determining tax debt.
Very Literate	75–100% (7.5–10)	Very familiar with tax issues. Have a high level of knowledge related to taxation terms and can calculate their own tax debt.

Sections (4) and (5) of the questionanire, had 1 question each to measure the level of perception regarding the importance of tax education, and to measure the level of perception regarding the need for tax education.

For qualitative data collection, this study used structured interviews. In addition, the interview process was carried out through face-to-face interviews so that researchers

41 Uma Sekaran and Roger Bougie, *Research Methods for Business: A Skill Building Approach* (John Wiley & Sons, 7th ed, 2016).

42 Ibid.

43 Kamaluddin and Madi (n 35).

44 Ibid.

could adapt to the interview process. Interviews were conducted with three speakers from the Directorate of Counseling, Services and Public Relations, the DGT, who could help to analyse the Tax Awareness Inclusion program, tax education and tax knowledge.

C *Variable Operationalisation*

TABLE 2: VARIABLE DESCRIPTION

VARIABLE	DESCRIPTION
SCORE	The respondents' tax knowledge level is measured based on the questionnaire's multiple choice section answers.
PIMP (Perception of Importance)	The level of the respondents' perception regarding the importance of tax education. Measured based on the results of the questionnaire answers using a Likert scale.
PNEED (Perception of Need)	The level of the respondents' perception regarding the need for tax education. Measured based on the results of the questionnaire answers using a Likert scale.
EDU	Respondents' tax education. Respondents were grouped into respondents who had received tax education ('*EDUCATED*') and respondents who had never received tax education ('*NON-EDUCATED*').
GEN	Respondents' gender. Respondents were grouped into respondents with male gender ('*MALE*') and female gender ('*FEMALE*').
REG	The origin area of the respondents' university. Respondents were grouped into respondents from Java ('*JAVA*') and those from outside Java ('*NON-JAVA*').

D *Data Processing Method*

In processing quantitative data, hypothesis testing was conducted using the independent sample t-test method. Relevantly, if the t-statistics value was below the level of significance, then H0 was rejected and H1 was accepted.[45] On the other hand, data from the interview was to eb written and summarised to enable further analysis.

IV RESEARCH RESULTS AND DISCUSSION

This part of the paper presents the results of the questionnaires administered in this study and discusses findings relevant to the surveys and interviews that were conducted.

[45] Damodar N Gujarati and Dawn C Porter, *Basic Econometrics* (McGraw-Hill/Irwin, 2008).

A *Interview Results and Discussion*

Based on the interviews conducted, the Tax Awareness Inclusion program is one of the long-term programs that has been implemented by the DGT since 2014. This program aims to increase tax awareness for many parties, such as students at the primary, secondary and higher education levels, including teachers and lecturers. The Tax Awareness Inclusion program stems from the awareness of the importance of taxation, which is the backbone of the State budget. Although taxes are important, the level of tax compliance in Indonesia remains low. Relevantly, the Sub Directorate Head of Taxation Counseling, Ms Aan Almaidah Anwar, said that:

> 'The level of tax compliance in Indonesia [is] still low. The community considered this problem to be the result of low tax education given by the government early on. Therefore, by recognising these problems and the importance of taxes, [the] DGT wants to instil the value of tax awareness starting from the education world.'

The main target of the Tax Awareness Inclusion program is the 'education world' — all levels of education are the target of the Tax Awareness Inclusion program, from elementary schools, junior high schools, high schools, and higher education. Interviewees said that the process of making relevant teaching materials uses the help of a psychologist so that the material delivered for each level of education can be more appropriate and more understandable to that cohort or group of student. However, according to the Chairperson of the Counseling Section, Taxation Counseling Sub Directorate, Mr Ary Festanto:

> 'It will be difficult for the teaching staff to participate in tax inclusion programs if there are no instructions from the ministry. Therefore, [the] DGT can also contact ministries directly related to education.'

The Head of the Sub Directorate for Cooperation and Partnerships, Mr Yeheskiel mentioned that:

> 'The [Tax Awareness Inclusion] program is encouraging tax education to change from counseling to educating. However, because many people do not understand taxation, the tax education process is still inclusive. The [Tax Awareness Inclusion] program has a long-term road map. The program is divided into 3 (three) periods, i.e. 2017–2030 is the educational period, 2030–2045 is the awareness period, and 2045–2060 is the period of glory. In 2016, [the] DGT successfully collaborated with the Ministry of Research, Technology, and Higher Education to incorporate taxation materials into general compulsory subjects. In 2017–2018 [the] DGT has successfully cooperated with the Ministry of Education and Culture and has succeeded in submitting taxation materials to Elementary School books. In 2019, the DGT planned to include taxation material in books at the junior and senior high school level. The reference books can also be downloaded [from] the DGT website. In addition, [the] DGT has also held several events that are part of the [Tax Awareness Inclusion] program, such as the national taxation seminar and scientific paper competition. The DGT is also trying to issue regulations related to this program so that this program can be implemented throughout Indonesia.'

In its implementation of the Tax Awareness Inclusion program, there were several obstacles faced by the DGT. One of the biggest obstacles concerns human resources because the target of the Tax Awareness Inclusion program covers all of Indonesia's provinces. Cooperation from various parties is needed, especially from the community

and other ministries. Another obstacle to the Tax Awareness Inclusion program concerns the budget.

Based on the interviews, the DGT views that public tax knowledge remains low. This could be seen from the low level of tax compliance in Indonesia. Relevantly, the Head of the Sub-Directorate of Cooperation and Partnerships said that:

> 'Many people still consider that tax is hard to be understood. In addition, the lack of a good administrative system in Indonesia also makes taxation more complicated … people treat that tax as if tax is only a matter of payment and reporting, many do not understand the value and the importance of taxes. The University students' tax knowledge is quite dependent on their faculty background. Students who come from taxation backgrounds tend to have better tax knowledge compared to students without taxation backgrounds. Nevertheless, students who have good tax knowledge still have shortcomings in the aspect of technical knowledge. This might occur because of curriculum mismatches. Tax education has been around for a long time, but tax education is still unstructured. Deficiencies still exist in the curriculum in all level[s] of education which have led to technical knowledge gaps. Therefore, [the] DGT is trying to restructure the curriculum so that it could be more structured and measurable. [The] DGT feels that tax education is still very important and is needed by the community.'

In the end, the Tax Awareness Inclusion program is a large-scale program and is prioritised by the DGT given the low level of public tax knowledge. This long-term program requires cooperation from various parties in order to operate smoothly. The DGT hopes that with the Tax Awareness Inclusion program, public tax knowledge can increase so that Indonesia's tax ratio will increase, especially in 2030 where there will be a large demographic bonus. In addition, the DGT also hopes that with the program, more people will be interested in taxation so that there will be more tax-related events and activities.

B *Questionnaire Survey Results and Discussion*

Table 3 below presents the results of the survey questionnaire.

TABLE 3: HYPHOTHESIS TEST – TAX KNOWLEDGE LEVEL (SCORE)

	CATEGORY	N	MEAN	STD. DEVIATION	STD. ERROR MEAN	INDEPENDENT SAMPLE T-TEST
SCORE	EDUCATED	337	5.733	2.2625	.1232	0.000
	NON-EDUCATED	228	3.513	1.8043	.1195	
	EDUCATED_MALE	120	5.525	2.3189	.2117	0.210
	EDUCATED_FEMALE	217	5.848	2.2278	.1512	
	EDUCATED_JAVA	292	5.805	2.2367	.1309	0.1377
	EDUCATED_NON-JAVA	45	5.267	2.3970	.3573	
α = 5%						

INFORMATION:

SCORE: respondents' tax knowledge level; EDUCATED: respondents who have received tax education; NON-EDUCATED: respondents who have not received tax education; EDUCATED_MALE: male respondents who have received tax education; EDUCATED_FEMALE:

female respondents who have received tax education EDUCATED_JAVA: respondents from universities located in Java and who have received tax education; EDUCATED_NON-JAVA: respondents from universities located outside of Java and who have received tax education

Based on Table 3, the average group of students who have received tax education ('*EDUCATED*') is 5.73, which is within the literate level of tax knowledge (see Table 1 above). On the other hand, the average level of tax knowledge from a group of students who have not received tax education ('*NON-EDUCATED*') is 3.51, which is the level of tax knowledge that falls within the illiterate group. The average level of tax knowledge of students who have received tax education tends to be higher by 2.2, compared to the average level of tax knowledge of students who have never received tax education. Based on the results of the Independent Sample t-test among students who have received tax education ('*EDUCATED*') and who have not received tax education ('*NON-EDUCATED*') in Table 3, it can be seen that the value of p = 0.000 or in other words p <0.05. Therefore, there is a significant difference in the level of tax knowledge between groups of students who have received tax education, and groups of students who have never received tax education. This result is in accordance with the first hypothesis (i.e. H1), and further accords with previous studies.[46]

Based on Table 3, the average group of women with tax education ('*EDUCATED_FEMALE*') is 5.848, while the average group of men with tax education ('*EDUCATED_MALE*') is 5.525. The difference between the two groups is not very large, at around 0.3. Furthermore, both groups fall within the literate level of tax knowledge. Moreover, the results of the Independent Sample t-test between the '*EDUCATED_MALE*' and '*EDUCATED_FEMALE*' groups in Table 3, state that the value of p = 0.21, means p > 0.05. In other words, the second hypothesis (i.e. H2) is rejected and there is no significant difference related to the level of tax knowledge among male and female students who have received tax education.

The average group of students with tax education from universities located in Java ('*EDUCATED_JAVA*') is 5.805 which means that this group has a literate level of tax knowledge. On the other hand, the group of students with tax education from universities located outside of Java ('*EDUCATED_NON-JAVA*') has a mean of 5.267 which means that this group also has a literate level of tax knowledge. Relevantly, there is a difference of approximately 0.6 between the two groups. Based on the results of the Independent Sample t-test related to the '*EDUCATED_JAVA*' and '*EDUCATED_NON-JAVA*' groups in Table 3, it can be seen that the value of p = 0.137, in other words P > 0.05. Because P > 0.05, the third hypothesis (i.e. H3) is rejected and there is no significant difference in the level of tax knowledge between groups of students with tax education from universities located in Java and groups of students with tax education from universities located outside of Java. The average level of tax knowledge of respondents with tax education from universities located within Java tends to be higher than the average group from universities located outside of Java.

Table 4 (below) shows the results of the Independent Sample t-test on the 'EDU' independent variable for each question ('Qn'). There are 2 questions that have a value of

[46] Mohamad et al (n 31).

p > 0.05, namely Q1 regarding tax identification numbers ('TIN') and Q3 related to the extension of annual tax report reporting time. In other words, there is no significant difference between students who have received tax education and those who have not received tax education related to TIN issues and the extension of income tax return reporting time. Despite this, there is a significant difference between the two groups in the other 8 questions.

TABLE 4: INDEPENDENT SAMPLE T-TEST QUESTION

QUESTION	EDU	N	MEAN	STD. DEVIATION	STD. ERROR MEAN	INDEPENDENT SAMPLE T-TEST
Q1 – Those who are required to have TIN are …	EDUCATED	337	.680	.4674	.0255	.592
	NON-EDUCATED	228	.658	.4755	.0315	
Q2 – The reporting date limit for Annual Personal Tax Returns is …	EDUCATED	337	.792	.4063	.0221	.000
	NON-EDUCATED	228	.434	.4967	.0329	
Q3 – Taxpayers can extend the period of Annual Income Tax Return submission for … months	EDUCATED	337	.320	.4674	.0255	.178
	NON-EDUCATED	228	.268	.4437	.0294	
Q4 – Penalty sanctions for late reporting of Annual Personal Tax Returns are amounted to …	EDUCATED	337	.614	.4875	.0266	.000
	NON-EDUCATED	228	.408	.4925	.0326	
Q5 – The interest penalties for late tax payment is amounted to …	EDUCATED	337	.724	.4477	.0244	.000
	NON-EDUCATED	228	.421	.4948	.0328	
Q6 – The amount of tax relief for individuals who are married and do not have children (K/0) is …	EDUCATED	337	.448	.4980	.0271	.000
	NON-EDUCATED	228	.132	.3388	.0224	

Q7 – Personal income tax rates' and corporate income tax rates' type are … for personal income and … for corporate income	EDUCATED	337	.682	.4662	.0254	.000
	NON-EDUCATED	228	.395	.4899	.0324	
Q8 – The lowest personal income tax rate is …	EDUCATED	337	.742	.4383	.0239	.000
	NON-EDUCATED	228	.386	.4879	.0323	
Q9 – The deadline for taxpayers to make corrections on annual tax returns that have been reported is …	EDUCATED	337	.228	.4205	.0229	.004
	NON-EDUCATED	228	.132	.3388	.0224	
Q10 – Complementary document in the form of an identification number required by the Taxpayer to report the Annual Personal Tax Return is …	EDUCATED	337	.501	.5007	.0273	.000
	NON-EDUCATED	228	.303	.4604	.0305	
α = 5%						

INFORMATION:
Qn: Questionnaire question number n (n = 1–10); EDU: respondents' tax education status; EDUCATED: respondents who have received tax education; NON-EDUCATED: respondents who have not received tax education

Based on the average value, for all questions, the average value of the group of students with tax education is higher than the average value of students without tax education, in other words, the tax knowledge of students with tax education, generally, is higher. In addition, the average value of students without tax education for Q2–Q10 is below 0.5. In other words, the majority of students who have not received tax education are still unable to understand the general provisions of taxation and personal income tax, except for the TIN. This implies that the material contained in the DGT textbook on the Tax Awareness Inclusion program, which is one of the references in making this research questionnaire, is still not widely understood by students so the Tax Awareness Inclusion program itself is important to overcome these problems.

TABLE 5: HYPHOTHESIS TEST – PERCEPTION REGARDING THE IMPORTANCE OF TAX EDUCATION (PIMP)

	EDU	N	MEAN	STD. DEVIATION	STD. ERROR MEAN	INDEPENDENT SAMPLE T-TEST
PIMP	EDUCATED	337	5.567	.6830	.0372	0.452
	NON-EDUCATED	228	5.522	.7114	.0471	

α = 5%

INFORMATION:
PIMP: level of perception regarding the importance of tax education; EDU: respondents' tax education status; EDUCATED: respondents who have received tax education; NON-EDUCATED: respondents who have not received tax education

In Table 5, it can be seen that there is no major difference in perception of the importance of tax education among students who have received tax education ('*EDUCATED*') and those who have not received tax education ('*NON-EDUCATED*'). The difference between these two groups is only around 0.04, where students who have received tax education have a higher level of perception.

Based on Table 5, the value of p = 0.452 and shows that the value of p > 0.05, and it can be concluded that there is no significant difference related to the perception of the importance of tax education between groups of students who have received tax education and groups of students who have not received tax education. This conclusion is not in accordance with the fourth hypothesis (i.e. H4) and also with the research of Hastuti[47] and Mahat and Ling.[48] Nevertheless, both groups have the perception that tax education is important.

TABLE 6: HYPHOTHESIS TEST – PERCEPTION REGARDING THE NEED OF TAX EDUCATION (PNEED)

	EDU	N	MEAN	STD. DEVIATION	STD. ERROR MEAN	INDEPENDENT SAMPLE T-TEST
PNEED	EDUCATED	337	5.531	.6985	.0380	0.004
	NON-EDUCATED	228	5.329	.9762	.0647	

α = 5%

INFORMATION:
PNEED: level of perception regarding the need for tax education; EDU: education status of the respondent's tax; EDUCATED: respondents who have received tax education; NON-EDUCATED: respondents who have not received tax education

Based on the results of the Independent Sample t-test in Table 6, the value of p = 0.004. In other words p < 0.05 and the fifth hypothesis (i.e. H5) is accepted. There is significant difference related to the need for tax education between groups of students who have received tax education and groups of students who have not received tax education. There is an average difference of 0.2 between these two groups where the groups already

47 Hastuti (n 13).

48 Mahat and Ling (n 12).

have higher tax education. Despite significant difference between the two groups, the majority of respondents from both groups assumed that they needed tax education.

V CONCLUSIONS AND SUGGESTIONS

Based on the results of the interviews, the DGT said that knowledge of public tax in Indonesia is still low. In terms of tax education, according to the DGT, tax education already exists but is still not structured. To overcome this, the DGT is implementing a Tax Awareness Inclusion program, which aims to improve the quality of tax education in the hope to increase the tax ratio for the next 30–45 years. This program has gained several goals, including the publication of textbooks for various levels of education, which are also a reference in the process of making this research questionnaire.

In addition, the results of the study also shows that there is a significant difference between students who have received tax education and students who have not received tax education, in terms of their level of tax knowledge. This finding is in accordance with previous studies.[49] However, there is no significant difference between students with tax education from universities located in Java and those from universities located outside Java, and there is also no significant difference between male and female students who have received tax education.

Regarding students' perceptions regarding the importance of tax education, there is no significant difference among students who have received tax education and those who have not received tax education. This result does not accord with previous studies. In terms of perceptions related to the need for tax education, there is a significant difference between students who have received tax education and those who have not received tax education which is in accordance with previous research.[50] The higher value of the 3 dependent variables in the group of students who have received tax education may occur because the student is more aware of the urgency of taxation and the value of tax itself.

Furthermore, related to the level of tax knowledge, the average value of students without tax education for 9 questions is below 0.5. In other words, the majority of students who have not received tax education are still unable to understand the general provisions of taxation and personal income tax, except for the TIN. This implies that the material contained in the DGT textbook within the Tax Awareness Inclusion program, which is one of the references in making this research questionnaire, is still not widely understood by students. Therefore, ensuring that the material in the textbooks in the Tax Awareness Inclusion program is appropriate, is important to overcome these problems.

This research can be developed by testing the relationship between independent variables to each dependent variable. In addition, further research can also add the number and topic of questionnaire questions.

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49 Mohamad et al (n 31).

50 Hastuti (n 13).

A *Limitations of this Study and Suggestions for Further Research*

The following are the limitations of this study and suggestions for research development:

1. This study did not examine the effect of the independent variables on each dependent variable, and vice versa, due to data limitations. Future research may consider looking for a relationship between the independent variables to each of the dependent variables.
2. This study only used 3 interviewees from the DGT to be interviewed. Future research can add the number of interviewees, for example, not only interviewing the DGT but also interviewing lecturers, tax consultants, recent graduates and others.

REFERENCES

A *Articles/Books/Reports*

Bahari, Anis Barieyah Mat and Lai Ming Ling, 'Introducing Tax Education in Non-Accounting Curriculum in Higher Education: Survey Evidence' (2009) 7(1) *Journal of Financial Reporting and Accounting* 37

Bhushan, Puneet and Yajulu Medury, 'Determining Tax Literacy of Salaried Individuals - An Empirical Analysis' (2013) 10(6) *IOSR Journal of Business and Management* 76

Blechová, Beáta and Šárka Sobotovičová, 'Analysis of Tax Education in a Business School: A Case Study' (2015) 24(2) *Periodica Polytechnica Social and Management Sciences* 113

Cvrlje, Dajana, 'Tax Literacy as an Instrument of Combating and Overcoming Tax System Complexity, Low Tax Morale and Tax Non-Compliance' (2015) 4(3) *The Macrotheme Review* 156

Deris, Mohmad Sakarnor Bin, Norkhazimah Bt Ahmad and Marziana Bt Hj Mohamad, 'Perceptions of Taxpayers with Level of Compliance: A Comparison in the East Coast Region' (2010) 1(1) *Journal of Global Business and Economics* 241

Fallan, Lars, 'Gender, Exposure to Tax Knowledge, and Attitudes Towards Taxation; An Experimental Approach' (1999) 18 *Journal of Business Ethics* 173

Gujarati, Damodar N and Dawn C Porter, *Basic Econometrics* (McGraw-Hill/Irwin, 2008)

Hazianti Abdul Halim, Noor Lela Ahmad, Nooraisah Katmun and Hartini Jaafar, 'Understanding and Attitudes Towards Self-Assessment Taxation System: The Case of Malaysian Non-Accounting Undergraduates Students' (2015) 6(2) *Global Review of Accounting and Finance* 110

Hastuti, Rini, 'Tax Awareness and Tax Education: A Perception of Potential Taxpayers' (2014) 5(1) *International Journal of Business, Economics and Law* 83

Kamaluddin, Amrizah and Nero Madi, 'Tax Literacy and Tax Awareness of Salaried Individuals in Sabah and Sarawak' (2005) 3(1) *Journal of Financial Reporting and Accounting* 71

Madi, Nero, Amrizah Kamaluddin, Tamoi Janggu, Muliati Binti Aba Ibrahim, Aizimah Binti Abu Samah and Kamaruzaman Jusoff, 'Tax Literacy Among Employees: Sabah and Sarawak's Perspective' (2010) 2(1) *International Journal of Economic* 218

Mahat, Mohd Amran and Lai Ming Ling, 'Featuring Tax Education in Non-Accounting Curriculum: Survey Evidence' (Conference Paper, ZBW - Leibniz Information Centre for Economics, 2011)

Mohamad, Marziana, Norsalihah Mohd Nor, Norshiela Bakar and Winnie Lemi Anak Nanta, 'Accounting vs Non-Accounting Majors: Perception on Tax Knowledge, Fairness and Perceived Behavioural Control' (2013) 3(9) *International Journal of Asian Social Science* 1887

Moučková, Michaela and Leoš Vítek, 'Tax Literacy' (2018) 66(2) *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* 553

Palil, Mohd Rizal, Mohd Rusyidi Md Akir and Wan Fadillah Bin Wan Ahmad, 'The Perception of Taxpayers on Tax Knowledge and Tax Education with Level of Tax Compliance: A Study the Influences of Religiosity' (2013) 1(1) *ASEAN Journal of Economics, Management and Accounting* 118

Park, Chang-Gyun and Jin Kwon Hyun, 'Examining the Determinants of Tax Compliance by Experimental Data: A Case of Korea' (2003) 25 *Journal of Policy Modeling* 673

Prastiti, Wiwien Dinar and Susantyo Yuwono, *Psikologi Eksperimen: Konsep, Teori, dan Aplikasi* (Universitas Negeri Muhammadiyah, 2018).

Saad, Natrah, 'Tax Knowledge, Tax Complexity and Tax Compliance: Taxpayers' View' (2014) 109 *Procedia – Social and Behavioral Sciences* 1069

Sekaran, Uma and Roger Bougie, *Research Methods for Business: A Skill Building Approach* (John Wiley & Sons, 7th ed, 2016)

Waris, A and H Murangwa, 'Utilising Tax Literacy and Societal Confidence in a State: The Rwandan Model' (2012) *University of Nairobi Law Journal*

B *Other*

Berhane, Zelalem, 'The Influence of Tax Education on Tax Compliance Attitude' (MSc Thesis, Addis Ababa University, October 2011)

Eaton, Sarah, 'Formal, Non-Formal and Informal Learning: What are the Differences?' (Newsletter, Spring Institute of Intercultural Learning, 2010)

Echols, John M and Hassan Shadily, *English-Indonesian Dictionary* (PT Gramedia Pustaka Utama, 1975).

Palil, Mohd Rizal, 'Tax Knowledge and Tax Compliance Determinants in Self Asssessment System in Malaysia' (PhD Thesis, University of Birmingham, 2010)

United Nations Educational, Scientific and Cultural Organization, 'Education for All Global Monitoring Report: Understandings of Literacy' (Report, 2006) <http://www.unesco.org/education/GMR2006/full/chapt6_eng.pdf>

CITATION TOOLS FOR TAXATION AND OTHER PUBLICATIONS

COLIN FONG*

ABSTRACT

Apart from the common cry of 'publish or perish', academics are confronted with an additional pressure to show where their work has been cited. This is partly to overcome the claim that academic writing is only for academia's blinkered ivory tower existence. Unfortunately, there exists irony in that many refereed journal articles are often only read by other academics, whereas many non-refereed journal articles might be more widely read by relevant practitioners working in the article's field of study. Practitioners are often the individuals, groups or organisations that help fund universities with contribution made towards professorial chairs, lecture theatres or libraries, for example.[1]

Given the nature of this research topic, parts of this paper are written in essay style from the perspective of the author. The ultimate aim of this paper is to illustrate the myriad of sources which can be used to assist academics in identifying where their publications have been cited, both within refereed journals and non-refereed journals and practitioner journals as well as elsewhere. Accordingly, this paper provides many examples of searches conducted by the author with a particular emphasis on taxation publications. The limitations concerning numerous publications and electronic sources are also highlighted.

Keywords: citation tools, publication, indexes, databases

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1 Relevantly, on 25 March 2007, the University of New South Wales ('UNSW') announced the appointment of Professor Bob Deutsch as the first KPMG sponsored Professor of Taxation at the Australian School of Taxation ('Atax') in the Faculty of Law. Furthermore, at Oxford University, Judith Freedman was appointed as the KPMG Chair in Tax Law in October 2001; in 2013 law firm Pinsent Masons took over the funding of this Chair position with it having since been renamed the Pinsent Masons Chair in Tax Law. In addition, Herbert Smith Freehills funds the law libraries at both the University of Sydney and the UNSW, with naming rights to these libraries.

I INTRODUCTION

There is no doubt that most academics are required to research as part of their role. Accordingly, it stands to reason that there is great utility in academics not only maintaining records of the articles they have written, but also being cognisant of the location in which those works have subsequently been cited. On this point, citation tools are often used by academics to boost their chance of promotion. Unfortunately however, there is not one central location to approach to ascertain where certain publications were, or may be, cited. For example, academic works may be cited in a variety of sources such as textbooks, journal articles, law reform commission reports, government reports, legal encyclopaedias or during parliamentary debates.

The motivation for writing this paper, largely stems from the authors' personal experience which is testament to the need to be aware of where academic works are cited. Relevantly, over ten years ago, an Australasian Tax Teachers Association ('ATTA') member, prior to their promotion as professor, approached the author to ascertain where their publications had been cited. Later, in 2019 and following the passing of an ATTA member, the author thought it would be a useful exercise to not only compile a list of the deceased's publications but also to ascertain where their publications had since been cited.[2] In light of these two experiences, it is likely other academics are interested — or would derive value — in the exercise of identifying where their publications have been cited.

Against this background, this paper seeks to outline how an Australian academic might go about finding where their publications have been cited. This paper focuses primarily on social sciences such as taxation, law and economics. Accordingly, the tools used for citation purposes will be those existing in these subject areas.

II STARTING AT THE BEGINNING

When authors prepare works for publication there are variations in how their names might appear when published. Sometimes, their name appears as given name and surname; sometimes, the authors' name appears as initial/s and surname, and other times it might appear as an abbreviated given name and surname. This poses problems with respect to how the publication is cited, and a similar problem also occurs with case party names.[3]

It is important to note that a good understanding of Boolean search operators can often be instrumental to identifying a large number of cited works. This will be briefly

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2 See Australasian Tax Teachers Association ('ATTA'), 'ATTA News' (Newsletter, August 2019) item 7 <atta.network/s/2019_ATTA_News_Full_Year.pdf>.

3 For example, many years ago when searching how many cases had cited *Breen v Williams* (1996) 186 CLR 71, AustLII at the time, had listed this case under the given name of the appellant Julie Breen v Cholmondeley W Williams, so it was difficult to update this case as subsequent references to this case normally only used the surnames of the parties. This has since changed within AustLII.

demonstrated below and remains practically relevant for what is discussed in Part IV of this paper.

A *A Series of Worked Examples*

When teaching legal research at UNSW Law, students are often tasked with finding essays by former Chief Justice Robert French on judicial activism. Using the Informit AGIS Plus Text ('Informit') database,[4] students routinely type in the search bar 'Robert French judicial activism' which returns one result: French, Robert, 'Judicial Review: Populism, the Rule of Law, Natural Justice and Judicial Independence' (2017) 44(9) *BRIEF* 19–24. When students are subsequently informed to type into the Informit search bar 'French judicial activis*' they are surprised to identify that, in addition to the above result, two more search results appear:

- French, RS, 'Judicial Activism: The Boundaries of the Judicial Role' (2010) 10(1) *Judicial Review* 1–10.
- French, Robert, 'Judicial Activists: Mythical Monsters?' (2008) 12 *Southern Cross University Law Review* 59–74.

From the above, it can be observed that in some citations, the former Chief Justice is listed as French, Robert and in others as French, RS. It should be noted that the word 'activist' was truncated by way of Boolean search operator to 'activis*' in order to enable a variety of other search possibilities such as both 'activism' and 'activist'.

Further to this example, in the tax sphere there are a myriad of different ways that Professor Rick Krever may be cited. Sometimes Professor Krever is listed as 'Krever, Richard', 'Krever, Rick', 'Krever, RE' or 'Krever, R'. Relevant examples include:

- Krever, Rick, 'Tribute: Abe Isaac Greenbaum and Australian Tax Teaching' (2000) 10(1) *Revenue Law Journal* v–viii.
- Yue Mei, Guo and Krever, Richard, 'Tax Expenditure Scholarship and Analysis in China' (2019) 34(1) *Australian Tax Forum* 199–219.
- Li, N and Krever, RE, '24 Years Later – China Finally Centralizes its Tax Administration' (2018) 90(5) *Tax Notes International* 539–544.

It follows that, if someone wished to see if any of the above works by Professor Krever had been cited elsewhere, they would have to identify and cite the different ways that Professor Krever has been cited in the examples above.

As a final example, the late Robert Baxt often wrote under his shortened given name, 'Bob', however as an author of numerous textbooks he would write more formally under his full given name, 'Robert', and sometimes using only the initial of his given name, 'R'.[5]

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4 RMIT University, 'Informit AGIS Plus Text' (Web Page, 2020) <https://www.informit.org/informit-agis-plus-text>.

5 See, eg, Robert Baxt, Ashley Black and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis Butterworths, 7th ed, 2008); R Baxt, *Auditors and Accountants: Their Role, Liabilities and*

Accordingly, as can be seen from the above worked examples, it is likely to be easier to find citations to relevant works if a consistent given name and surname are provided in publications. Otherwise, searches would have to be performed using the myriad of variations that exist in relation to the author's name.

Nevertheless, there remain limitations with either approach, such as where the author shares their name with many others. For example, if searching for works by 'Chris Evans', the searcher may return results related to the ATTA member, Chris Evans, or the Hollywood actor who possesses the same name. Moreover, out of two known Australian academics who share the same name, one of the academics recently had to insert a middle name into their publications to avoid confusion with the other academic who shares the same name.[6]

III WHY CAN ONE NOT SIMPLY RELY ON 'DR GOOGLE'?

One of the first ports of call for many people when seeking to source additional information is 'Dr Google'. Unfortunately however, Google cannot find all the places where work has been cited due to Google's limited access to subscription websites. There is little doubt that subscription websites form a large part of where academic works are likely to appear and be cited. Moreover, there are some websites that do not allow Google to search within their website. For example, it is the author's understanding that Google is prevented from accessing parts of the Australasian Legal Informative Institute's ('AustLII') website.

Notwithstanding, there are occasions where Google can sometimes find some citations that appear in books as Google will often reproduce parts of books. On this point, one of the benefits of Google is the Google Scholar website[7] which allows researchers to narrow their searches to scholarly materials. Where an academic searches on Google Scholar and the academic's institution subscribes to something found on Google Scholar, accessing the resource may be streamlined; this is due to the fact that with one click the full text of the material in question can be accessed via the institutions subscription.

Another useful feature of Google Scholar is Google Scholar MyCitations which allows researchers to find their publications and to see where their works have been cited. Notwithstanding, Google Scholar MyCitations is a feature accessible through a registered Google Scholar account which must be set-up by the academic prior to use.

Duties (CCH Australia, 3rd ed, 1987); Bob Baxt, 'Directors' Counsel: Bank Robbery' (2018) 34(2) *Company Director* 36.

6 In the Wikipedia entry for Ann Kirsten Carr-Boyd, it has 'Her quasi-namesake and fellow Australian composer Anne Boyd is no relation': Wikipedia, 'Ann Carr Boyd' (Web Page, 15 January 2019) <https://en.wikipedia.org/wiki/Ann_Carr-Boyd>.

7 *Google Scholar* (Web Page, 2020) <https://scholar.google.com/>.

IV SOURCING CITED WORKS

There are a variety of tools and resources that can be accessed to identify cited works. A number of these are explored below. It should be noted however, that when using these tools and resources, the use of search terms and Boolean search operators (as explored in Part II above) remains relevant.

A *Citation Indexes*

Australian universities use a variety of tools to identify where the works of their academics have been cited – these are commonly known are citation indexes, databases or repositories. For example, at UNSW Sydney and Canberra, the library utilises a Research Outputs System ('ROS') to record academic works.[8] This service allows you to identify where your works have been cited via a regular email.

Furthermore, the UNSW Library website offers a Publishing Strategy Guide that lists various tools and suggests that:

> [m]easuring your impact is about identifying evidence that your work is influencing either other scholars or the wider world. Most research will be best represented using a combination of quantitative and qualitative approaches to measure impact, although this can differ vastly by field.[9]

Within the Publishing Strategy Guide, a number of tools are identified to assist researchers in finding metrics relevant to their chosen field. The ones of particular interest to the social sciences include:

- Scopus.[10] This service 'combines a comprehensive, curated abstract and citation database with enriched data and linked scholarly content.'[11]
- Google Scholar's MyCitations. Once this service is properly set-up by a researcher, the service often recognises various publications made by the account holder. However, given its wide search parameters, the service can sometimes identify sources that are authored by someone with the account holder's name, however were not actually authored by that person.
- Journal Citation Reports[12] ('JCR') database which:

> can show the highest impact journals, most frequently used journals, hottest journals and largest journals, et cetera[.] The JCR has two editions: JCR Science Edition containing data

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8 UNSW Library, 'Research Outputs System (ROS)' (Web Page, 2020) <https://www.library.unsw.edu.au/research/managing-and-evaluating-your-research/ros>.

9 UNSW Library, 'Publishing Strategy Guide' (Web Page, 2020) <https://subjectguides.library.unsw.edu.au/publishing/measurement>.

10 Elsevier B.V, 'Document Search', *Scopus* (Web Page, 2020) <https://www.scopus.com/search/form.uri?display=basic>.

11 Elsevier B.V, 'Scopus' (Web Page, 2020) <https://www.elsevier.com/solutions/scopus?dgcid=RN_AGCM_Sourced_300005030>.

12 Clarivate, 'InCites Journal Citation Reports' (Web Page, 2020) <https://jcr.clarivate.com/>.

> from roughly 5,000 journals in the areas of science and technology. JCR Social Science Edition containing data from roughly 1,500 journals in the social sciences.[13]

While the UNSW Library recommends and subscribes to the above resources, among many others, it is the author's understanding that the University of Melbourne uses Minerva[14] and the University of Queensland uses eSpace,[15] which are both research repositories with similar functionality and use as the UNSW's ROS.

While there are a number of online citation indexes that identify cited works, some external programs can also be used to identify publications. One relevant example includes Anne-Wil Harzing's Publish or Perish website[16] which 'is a software program that retrieves and analyses academic citations'. According to the Publish or Perish website, the software program is relevant when applying for promotion or performance appraisal and is ultimately:

> designed to help individual academics to present their case for research impact to its best advantage, even if you have very few citations. You can also use it to decide which journals to submit to, to prepare for a job interview, to do a literature review, to do bibliometric research, to write laudations or obituaries, or to do some homework before meeting your academic hero. Publish or Perish is a real Swiss army knife.[17]

B *Journal Articles*

Journal articles can appear on a variety of databases, such as those previously mentioned. However, when trying to identify cited journal articles researchers need access not only to a journal index, but to a journal index with full text content and to electronic full text databases.

It should be noted that if a journal index with some full text articles is used, inputting the academic's name is unlikely to yield relevant results where the academic has been cited elsewhere. This is because the indexing only covers a brief description of the journal article and not the full text, for example Informit. However, some journal indexes do cover some of the full text content, for example LegalTrac.[18]

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13 UNSW Library, 'Database: Journal Citation Reports' (Web Page, 2020) <https://primoa.library.unsw.edu.au/primo-explore/fulldisplay/UNSW_ALMA61158503640001731/UNSWS>.

14 The University of Melbourne, 'University Library: Minerva Access' (Web Page, 2020) <https://minerva-access.unimelb.edu.au/>.

15 The University of Queensland, 'UQ eSpace' (Web Page, 2020) <https://espace.library.uq.edu.au/>.

16 Anne-Wil Harzing, 'Publish or Perish' (Web Page, 14 June 2020) <https://harzing.com/resources/publish-or-perish>.

17 Ibid.

18 Gale Cengage Company, 'Gale OneFile: LegalTrac' (Web Page, 2020) <https://www.gale.com/intl/c/legaltrac>.

Ultimately, the best way to discover where one has been cited in legal and possibly some taxation journals is the use of full text journal databases[19] such as:

- The Attorney-General's Information Service (Attorney-General's Department Library, Canberra). Since 1973 this service indexes the journals received in the Attorney-General's Department Library in Canberra. It also contains the full text of many Australian law journals.
- AustLII[20] which contains the full text of most Australian and New Zealand academic law journals.
- The Australian Legal Journals Index ('ALJI').[21] Using the Attorney-General's Information Service as its base, this database also includes the full text of ThomsonReuters journals.
- The Australian Public Affairs Information Service ('APAIS') is available via the National Library of Australia ('NLA').[22] The NLA is the depository of all Australian publications, APAIS indexes many Australian legal, tax, economics and accounting journals with some full text.
- HeinOnline[23] is a United States ('US') based full text service of US and overseas law journals.
- International Bureau of Fiscal Documentation ('IBFD') Tax Research Platform[24] allows access to the full text of journal articles, monographs and other materials published by the IBFD.
- LegalTrac (Gale)[25] is a US based journal index with many of the articles indexed in full text.
- Lexis Advance[26] allows subscribers to access the content of LexisNexis depending on the institution's subscription. Content may range from those found in various jurisdictions such as Australia, New Zealand, the United Kingdom and the US.
- Social Science Research Network ('SSRN').[27] According to the SSRN website, 'SSRN´s eLibrary provides 900,457 research papers from 441,886 researchers in

19 Some of these databases do not have the full text of every journal article indexed.

20 AustLII, 'Australasian Legal Information Institute' (Web Page, 2020) <http://www.austlii.edu.au>.

21 Thomson Reuters (Professional) Australia Limited ('Thomson Reuters'), 'Australian Legal Journals Index Online' (WebPage, 2020) <http://sites.thomsonreuters.com.au/journals/alji>.

22 National Library of Australian, 'APAIS: Australian Public Affairs Information Service, A Subject Index to Current Literature' (Web Page, 2020) <https://catalogue.nla.gov.au/Record/79092>.

23 *HeinOnline* (Web Page, 2020) <https://home.heinonline.org/>.

24 IBFD, 'Tax Research Platform' (Web Page, 2020) <https://research.ibfd.org/#/>.

25 Gale Cengage Company (n 17).

26 Formerly called Lexis Advance Pacific prior to the end of 2019. LexisNexis, 'Lexis Advance' (Web Page, 2020) <https://advance.lexis.com>.

27 Elsevier, 'SSRN' (Web Page, 2020) <https://www.ssrn.com/index.cfm/en/>.

more than 50 disciplines'.[28] Many academics publish initially in SSRN prior to finalising their work for publication.

- The Tax Institute[29] website allows subscribers to access the full text of The Tax Institute's publications.
- WestLaw AU[30] allows subscribers to access the content of Thomson Reuters' Australian publications. The content accessible however, will depend on the institution's subscription.
- WestLaw International[31] allows subscribers to access the content of Thomson Reuters' depending on the institution's subscription. Content may range from those found in various jurisdictions such as Australia, New Zealand, the United Kingdom and the US.

C *Textbooks and Monographs*

As many textbooks and monographs are not available electronically, identifying cited works that appear in these forms can be a difficult task to perform. However, there are notable exceptions to this general proposition as some databases do provide access to textbooks and monographs. Relevant examples include the IBFD Tax Research Platform, Cambridge Core[32] (the new books and journals platform from Cambridge University Press) and Oxford Digital.[33]

People can also (unreliably) rely on word-of-mouth — for example, sometimes, people will notify an author when they have seen that author's work cited in another work. While this method might inform an author of a new work which has cited their publication that they would otherwise be unaware of, this method is not without obvious limitations. These limitations include the requirement for people to inform one of their cited works, which in reality, is unlikely to occur with every instance a work is cited.

As mentioned earlier, Google Scholar does reproduce a select number of pages from numerous books. If an author is fortunate enough, their publications might be cited in the reproduced pages. This is not a reliable source however. Nevertheless, with the advent of

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28 Ibid. It should be noted this was the case as of 15 December 2019.

29 The Tax Institute, 'Search and Access' (Web Page, 2020) <https://www.taxinstitute.com.au/resources/search-and-access/search-and-access>.

30 Thomson Reuters, 'Westlaw: Legal Research Now and for Tomorrow' (Web Page, 2020) <https://legal.thomsonreuters.com.au/products/westlaw/>.

31 Thomson Reuters, 'International Materials' (Web Page, 2020) <http://www.westlawinternational.com/>.

32 Cambridge University Press, 'Cambridge Core: The Home of Academic Content' (Web Page, 2020) <https://www.cambridge.org/core/>.

33 Oxford University Press Australia and New Zealand, 'Oxford Digital' (Web Page, 2020) <https://www.oxforddigital.com.au/>.

books increasingly becoming available electronically, an author's chances of finding their works cited have naturally increased.

D *Legal Encyclopaedias*

In Australia and New Zealand there are three major legal encyclopaedias:

- Halsbury's Laws of Australia[34] by LexisNexis Australia.
- The Laws of Australia[35] by Thomson Reuters.
- The Laws of New Zealand[36] by LexisNexis New Zealand.

Relevantly, each legal encyclopaedia adopts a different subject heading for taxation:

- Halsbury's Laws of Australia uses 'Taxation and Revenue'.
- The Laws of Australia uses 'Revenue Law'.
- The Laws of New Zealand uses 'Revenue'.

It is common for academics to find their publications cited in the above works.[37]

E *Law Reform Commission Reports*

There have been numerous reviews into taxation matters in both Australia and New Zealand. Most of these reviews have been government reports chaired by an eminent person, rather than by the various Law Reform Commissions. To ascertain whether an academic has been cited in various Law Reform Commission publications, it is useful to search the Australasian Law Reform Library[38] which is available on the AustLII website. This library contains 'databases of law reform reports of all permanent Australian and New Zealand law reform bodies'.[39] This is likely to be far more productive than searching the websites for each individual Law Reform Commission.

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34 LexisNexis, 'Halsbury's Laws of Australia – Online' (Web Page, 2020) <http://www2.lexisnexis.com.au/sites/en-au/products/halsburys-laws-of-australia-online.page>.

35 Thomson Reuters, 'The Laws of Australia' (Web Page, 2020) <https://legal.thomsonreuters.com.au/the-laws-of-australia/productdetail/37460>.

36 LexisNexis, 'The Laws of New Zealand' (Web Page, 2020) <http://www.lexisnexis.co.nz/en-nz/products/the-laws-of-new-zealand.page>.

37 See, eg, R Krever, 'The Capital Gains Tax Consequences of Litigation' (1997) 71 *Australian Law Journal* 699, cited in Westlaw AU, *The Laws of Australia* (online at 1 June 2016) 33 Torts, '33.10 Damages' [33.10.570]; M Stewart, 'Towards Flow Through Taxation of Limited Partnerships: It's Time to Repeal Division 5A' (2003) 32 *Australian Tax Review* 171, cited in LexisNexis, *Halsbury's Laws of Australia* (online at 16 November 2020) 305 Partnerships and Joint Ventures, 'Further References – Partnerships and Joint Ventures'.

38 AustLII, 'Australasian Law Reform Library' (Web Page, 2020) <http://www.austlii.edu.au/au/special/lawreform>.

39 Ibid.

F *Government Reports*

Nowadays, many government reports are available electronically. Accordingly, whenever a new government report is available, an academic can review the report for citations of their works by using the 'Control F' function (Windows users) or the 'Command F' function (Macintosh users), and inputting their name to see if they have been cited. Unfortunately, given the breadth of government organisations and reports, there does not appear to be a single location or website that searches *all* available government reports. Furthermore, not all government reports are available electronically — many government reports issued prior to the advent of the internet remain undigitised.

Notwithstanding, as mentioned earlier in this paper, it remains useful for academics to have a wide network of people who can identify and report instances where their fellow colleagues have been cited.

G *Parliamentary Debates*

Sometimes, academic works can also be cited by both Federal and State Parliaments. Accordingly, it can be useful for academics to review *Hansard* to ascertain whether any of their works have been referred to in Parliament. Notably, however, each jurisdiction maintains its own *Hansard* record[40] and accordingly, performing these searches could prove tedious to one, perform or two, to filter the results.[41]

H *Court Judgments*

Tax academics are cited in court judgments. However, many academics do not get cited and it is the author's suspicion that this might be because the articles are 'too academic' and might neglect some of the practicalities associated with a particular case. Notwithstanding, tax textbooks authored by academics often get cited ahead of refereed tax journal articles. However, there are some exceptions to this general assertion.[42]

The author notes that following initial presentation of this paper at the 2020 ATTA Conference, an audience member was informed by another ATTA member that one of

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[40] See, eg, Parliament of Australia, 'Hansard' (Web Page, 2020) <https://www.aph.gov.au/Parliamentary_Business/Hansard>; Parliament of Victoria, 'Hansard' (Web Page, 2020) <https://www.parliament.vic.gov.au/hansard>.

[41] For example, a search of Australian Federal Hansard for 'Neil Warren' returned 100 search results when the search was limited to 1995–2019. However, when searching for 'Warren, Neil' and 'Warren Neil', zero results were returned. As a further example in a New Zealand context, a search of New Zealand Hansard for 'Craig Elliffe' returned 10 results.

[42] See, eg, B Tran-Nam, 'Tax Reform and Tax Simplification: Some Conceptual Issues and a Preliminary Assessment' (1999) 21(3) *Sydney Law Review* 500, 505–506, cited in *Commissioner of Taxation v Scully* (2000) 201 CLR 148; R Krever, 'Taming Complexity in Australian Income Tax' (2003) 25(4) *Sydney Law Review* 467, cited in *Commissioner of Taxation v Stone* (2005) 222 CLR 289; Graeme Cooper, Robert Deutsch and Richard Krever, *Cooper, Krever and Vann's Income Taxation: Commentary and Materials* (Lawbook Company, 1993, 2nd ed), cited in *Federal Commissioner of Taxation v Rowe* (1997) 187 CLR 266.

their publications[43] had been cited in the High Court of Australia.[44] This further solidifies the power and value of networks informing researchers of the possible places where publications have been cited.

To briefly examine the impact and reach of some Australian and New Zealand tax journals within judgments of the High Court of Australia, the author tallied up how many times journal articles from various Australian and New Zealand tax journals had been cited in judgments of the High Court of Australia. The results are as follows:[45]

JOURNAL	NUMBER OF SEARCH RESULTS
Australian Tax Forum	1
Australian Tax Review	8
Journal of Australian Taxation	3
New Zealand Journal of Taxation Law and Policy	2

From these results, it can be identified that the *Australian Tax Review* is cited more frequently than other academic tax journal articles. One rationale might be distilled from the notion that the *Australian Tax Review* is aimed at practitioners and it is likely the judiciary prefers to cite articles aimed at practitioners ahead of more scholarly articles.

4 *ATTA Patrons Award*

In the ATTA News during 2019, The Hon Tony Pagone, former judge of the Federal Court, offered to sponsor an annual ATTA Patron's Award for ATTA members. The award is for tax academic engagement with the judiciary. This could, for example, be for a significant analysis of a judicial decision or for an academic whose work is cited in a significant way in a judicial decision.

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 award is worth AUD1,000 and nominations will need to include:

- the name of the person who is nominated for the award; and
- detail(s) of the engagement with judiciary.

The award winner will be determined by the ATTA Executive, taking into account the depth and breadth of the engagement activity. An award will not be given in any year if no eligible nominations are received.

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43 N Augustinos, 'Blackhole expenditures and the operation of Section 40-880' (2009) 38 *Australian Tax Review* 100.

44 *Commissioner of Taxation v Sharpcan Pty Ltd* (2019) 93 ALJR 1147.

45 It should be noted that this review was current as of 15 December 2019. The author acknowledges that there are noticeable limitations to this review and further, that the results are biased as only the High Court of Australia was examined. A widened search parameter including more Australian and New Zealand courts would have yielded different results.

The inaugural award was presented at the ATTA Conference in 2020 by Justice Pagone. During the 2020 ATTA Conference, the first recipient was announced as Professor Craig Elliffe from the University of Auckland.

I *Social Media (Twitter)*

Many organisations and academics have social media accounts including Twitter and/or LinkedIn.[46] Nowadays, with the rise of social media, these platforms can be used to disseminate, cite and refer to academic works. As mentioned earlier, however, people seeking to review these sites for citations must be diligent to ensure the account they are searching is indeed a legitimate account for the intended organisation or person.[47]

J *Serendipity*

By the term 'serendipity', the author means that sometimes an academic's work may be found where the citation omits the academic's name as author.[48]

Other times, an academic's work may be cited but the citation misspells the author's name.[49]

K *Acknowledgements and Refereeing*

Many academics assist with the publications of colleagues or others, sometimes by proofreading a journal article or providing referee reports. This begs the question: How many academics have compiled a list of the places where they have been acknowledged? It would be no surprise to many that the list would be over a page long. The value in compiling a list of publications, citations as well as further acknowledgements is instrumental — it constitutes recognition of the hard work academics perform and it ought to be recognised.

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46 See, eg, 'ato.gov.au', *Twitter* (Profile, 2020) @ato_gov_au <https://twitter.com/ato_gov_au?lang=en>; 'The Tax Institute, *Twitter* (Profile, 2020) @TaxInstituteOz <https://twitter.com/TaxInstituteOz>; 'OECD Tax', *Twitter* (Profile, 2020) @OECDtax <https://twitter.com/oecdtax?lang=en>.

47 For example, Professor Brett Freudenberg does not use Twitter, whilst an account with a similar name appears on the Twitter platform: 'Bret Freudenberg', *Twitter* (Profile, 2020) @BretFreudenberg <https://twitter.com/bretfreudenberg?lang=en>.

48 See, eg, Colin Fong, 'Researching the Legal Aspects of Asylum Seekers and Refugees in Australia, Canada, and the United Kingdom', *GlobalLex* (Web Page, November 2007) <https://www.nyulawglobal.org/globalex/Legal_aspects_asylum_refugees_Australia_Canada_UK_EU.html>, cited in Sharona Brookman, 'Research Guide: Immigration and Refugee Law', *Osgoode Hall Law School Library* (Document, 2008) <http://library.osgoode.yorku.ca/documents/immigrationandrefugee.pdf>. Note author name 'Colin Fong' was omitted in Brookman's Research Guide.

49 See, eg, Margaret James and Colin Fong, *James Bibliography: The Australian Aborigine – The Application of the Law* (University of Sydney Law School Library, 2nd ed, 1976) vii, cited in CJ Brockwell, *Aborigines and the Law: A Bibliography* (Canberra: Research School of Sciences (ANU), 1979) 63. Note Fong was incorrectly cited as 'Pong'.

Unfortunately however, while many academics also become referees for various journal articles, much of this work is often unrecognised due to the refereeing process remaining confidential and consequently, the work performed in this regard often goes unnoticed.

L *Controversial Comments and Citations*

It should be acknowledged that even commentary of a controversial nature can easily be cited once made and entering the public domain. For example, in Sydney, radio host Alan Jones[50] caused commotion when he made some comments about New Zealand Prime Minister Jacinda Ardern on 14 August 2019.[51]

These comments were widely cited in print and electronic media, as well as various social media platforms. Ultimately, this is likely to apply to controversial comments made in academic works — Is this what our goal as academics is about?

V CONCLUSION

This paper briefly outlined the various places that academics can find out where their works have been cited. Some of these places might be familiar to most tax academics, while some may have previously be unknown. As illustrated in the above discussion, there is, unfortunately, not just one source to review, but a myriad of sources that academic works can be cited. There is great power and value in academics maintaining networks of colleagues and other professionals who inform researchers of the possible places where their publications have been cited.

Maintaining a list of publications, citations and acknowledgements is likely to be useful where academic employers require an employee to show the impact of their work in the wider community and profession. Often, academics who are regularly cited in the media are feted by their employers. As alluded to above, controversial comments should be both spoken and treated carefully. While these comments may result in those a greater number of citations, is this an area where academic integrity is being questioned?

The author notes that, for those academics with little available time, a research assistant might be available to help identify the places where your works have been cited.

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50 Jones retired from radio broadcasting at the end of May 2020.

51 See Velvet Winter, 'Twitter Comes for Alan Jones After he Tells PM to "Shove a Sock" Down Jacinda Ardern's Throat', *SBS The Feed* (online, 15 August 2019) <https://www.sbs.com.au/news/the-feed/twitter-comes-for-alan-jones-after-he-tells-pm-to-shove-a-sock-down-jacinda-ardern-s-throat>.

It is the author's understanding that Jones subsequently apologised for his comments.

REFERENCES

A *Articles/Books/Reports*

Augustinos, N, 'Blackhole expenditures and the operation of Section 40-880' (2009) 38 *Australian Tax Review* 100

Baxt, Bob, 'Directors' Counsel: Bank Robbery' (2018) 34(2) *Company Director* 36

Baxt, Robert, Ashley Black and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis Butterworths, 7th ed, 2008)

Baxt, R, *Auditors and Accountants: Their Role, Liabilities and Duties* (CCH Australia, 3rd ed, 1987)

Cooper, Graeme, Robert Deutsch and Richard Krever, *Cooper, Krever and Vann's Income Taxation: Commentary and Materials* (Lawbook Company, 1993, 2nd ed), cited in *Federal Commissioner of Taxation v Rowe* (1997) 187 CLR 266

French, Robert, 'Judicial Activists: Mythical Monsters?' (2008) 12 *Southern Cross University Law Review* 59

French, Robert, 'Judicial Review: Populism, the Rule of Law, Natural Justice and Judicial Independence' (2017) 44(9) *BRIEF* 19

French, RS, 'Judicial Activism: The Boundaries of the Judicial Role' (2010) 10(1) *Judicial Review* 1

James, Margaret and Colin Fong, *James Bibliography: The Australian Aborigine – The Application of the Law* (University of Sydney Law School Library, 2nd ed, 1976), cited in CJ Brockwell, *Aborigines and the Law: A Bibliography* (Canberra: Research School of Sciences (ANU), 1979)

Krever, R, 'Taming Complexity in Australian Income Tax' (2003) 25(4) *Sydney Law Review* 467, cited in *Commissioner of Taxation v Stone* (2005) 222 CLR 289

Krever, Rick, 'Tribute: Abe Isaac Greenbaum and Australian Tax Teaching' (2000) 10(1) *Revenue Law Journal* v

Li, N and Krever, RE, '24 Years Later – China Finally Centralizes its Tax Administration' (2018) 90(5) *Tax Notes International* 539

Tran-Nam, B, 'Tax Reform and Tax Simplification: Some Conceptual Issues and a Preliminary Assessment' (1999) 21(3) *Sydney Law Review* 500 cited in *Commissioner of Taxation v Scully* (2000) 201 CLR 148

Yue Mei, Guo and Krever, Richard, 'Tax Expenditure Scholarship and Analysis in China' (2019) 34(1) *Australian Tax Forum* 199

B *Cases*

Commissioner of Taxation v Sharpcan Pty Ltd (2019) 93 ALJR 1147

C *Other*

'ato.gov.au', *Twitter* (Profile, 2020) @ato_gov_au <https://twitter.com/ato_gov_au?lang=en>

AustLII, 'Australasian Law Reform Library' (Web Page, 2020) <http://www.austlii.edu.au/au/special/lawreform>

AustLII, 'Australasian Legal Information Institute' (Web Page, 2020) <http://www.austlii.edu.au>

Australasian Tax Teachers Association ('ATTA'), 'ATTA News' (Newsletter, August 2019) <atta.network/s/2019_ATTA_News_Full_Year.pdf>

'Bret Freudenberg', *Twitter* (Profile, 2020) @BretFreudenberg <https://twitter.com/bretfreudenberg?lang=en>

Cambridge University Press, 'Cambridge Core: The Home of Academic Content' (Web Page, 2020) <https://www.cambridge.org/core/>

Clarivate, 'InCites Journal Citation Reports' (Web Page, 2020) <https://jcr.clarivate.com/>

Elsevier, 'SSRN' (Web Page, 2020) <https://www.ssrn.com/index.cfm/en/>

Elsevier B.V, 'Document Search', *Scopus* (Web Page, 2020) <https://www.scopus.com/search/form.uri?display=basic>

Elsevier B.V, 'Scopus' (Web Page, 2020) <https://www.elsevier.com/solutions/scopus?dgcid=RN_AGCM_Sourced_300005030>

Fong, Colin, 'Researching the Legal Aspects of Asylum Seekers and Refugees in Australia, Canada, and the United Kingdom', *GlobalLex* (Web Page, November 2007) <https://www.nyulawglobal.org/globalex/Legal_aspects_asylum_refugees_Australia_Canada_UK_EU.html>, cited in Sharona Brookman, 'Research Guide: Immigration and Refugee Law', *Osgoode Hall Law School Library* (Document, 2008) <http://library.osgoode.yorku.ca/documents/immigrationandrefugee.pdf>

Gale Cengage Company, 'Gale OneFile: LegalTrac' (Web Page, 2020) <https://www.gale.com/intl/c/legaltrac>

Google Scholar (Web Page, 2020) <https://scholar.google.com/>

Harzing, Anne-Wil, 'Publish or Perish' (Web Page, 14 June 2020) <https://harzing.com/resources/publish-or-perish>

HeinOnline (Web Page, 2020) <https://home.heinonline.org/>

IBFD, 'Tax Research Platform' (Web Page, 2020) <https://research.ibfd.org/#/>

Krever, R, 'The Capital Gains Tax Consequences of Litigation' (1997) 71 *Australian Law Journal* 699, cited in Westlaw AU, *The Laws of Australia* (online at 1 June 2016) 33 Torts

LexisNexis, 'Halsbury's Laws of Australia – Online' (Web Page, 2020) <http://www2.lexisnexis.com.au/sites/en-au/products/halsburys-laws-of-australia-online.page>

LexisNexis, 'The Laws of New Zealand' (Web Page, 2020) <http://www.lexisnexis.co.nz/en-nz/products/the-laws-of-new-zealand.page>

LexisNexis, 'Lexis Advance' (Web Page, 2020) <https://advance.lexis.com>

National Library of Australian, 'APAIS: Australian Public Affairs Information Service, A Subject Index to Current Literature' (Web Page, 2020) <https://catalogue.nla.gov.au/Record/79092>

'OECD Tax', *Twitter* (Profile, 2020) @OECDtax <https://twitter.com/oecdtax?lang=en>

Oxford University Press Australia and New Zealand, 'Oxford Digital' (Web Page, 2020) <https://www.oxforddigital.com.au/>

Parliament of Australia, 'Hansard' (Web Page, 2020) <https://www.aph.gov.au/Parliamentary_Business/Hansard>; Parliament of Victoria, 'Hansard' (Web Page, 2020) <https://www.parliament.vic.gov.au/hansard>

RMIT University, 'Informit AGIS Plus Text' (Web Page, 2020) <https://www.informit.org/informit-agis-plus-text>

Stewart, M, 'Towards Flow Through Taxation of Limited Partnerships: It's Time to Repeal Division 5A' (2003) 32 *Australian Tax Review* 171, cited in LexisNexis, *Halsbury's Laws of Australia* (online at 16 November 2020) 305 Partnerships and Joint Ventures

The Tax Institute, 'Search and Access' (Web Page, 2020) <https://www.taxinstitute.com.au/resources/search-and-access/search-and-access>

'The Tax Institute, *Twitter* (Profile, 2020) @TaxInstituteOz <https://twitter.com/TaxInstituteOz>

Thomson Reuters (Professional) Australia Limited, 'Australian Legal Journals Index Online' (WebPage, 2020) <http://sites.thomsonreuters.com.au/journals/alji>

Thomson Reuters (Professional) Australia Limited, 'International Materials' (Web Page, 2020) <http://www.westlawinternational.com/>

Thomson Reuters (Professional) Australia Limited, 'The Laws of Australia' (Web Page, 2020) <https://legal.thomsonreuters.com.au/the-laws-of-australia/productdetail/37460>

Thomson Reuters (Professional) Australia Limited, 'Westlaw: Legal Research Now and for Tomorrow' (Web Page, 2020) <https://legal.thomsonreuters.com.au/products/westlaw/>

The University of Melbourne, 'University Library: Minerva Access' (Web Page, 2020) <https://minerva-access.unimelb.edu.au/>

The University of Queensland, 'UQ eSpace' (Web Page, 2020) <https://espace.library.uq.edu.au/>

UNSW Library, 'Database: Journal Citation Reports' (Web Page, 2020) <https://primoa.library.unsw.edu.au/primo-explore/fulldisplay/UNSW_ALMA61158503640001731/UNSWS>

UNSW Library, 'Publishing Strategy Guide' (Web Page, 2020) <https://subjectguides.library.unsw.edu.au/publishing/measurement>

UNSW Library, 'Research Outputs System (ROS)' (Web Page, 2020) <https://www.library.unsw.edu.au/research/managing-and-evaluating-your-research/ros>

Wikipedia, 'Ann Carr Boyd' (Web Page, 15 January 2019) <https://en.wikipedia.org/wiki/Ann_Carr-Boyd>

Winter, Velvet, 'Twitter Comes for Alan Jones After he Tells PM to "Shove a Sock" Down Jacinda Ardern's Throat', *SBS The Feed* (online, 15 August 2019) <https://www.sbs.com.au/news/the-feed/twitter-comes-for-alan-jones-after-he-tells-pm-to-shove-a-sock-down-jacinda-ardern-s-throat>