THE AUSTRALASIAN TAX TEACHERS ASSOCIATION
30TH ANNUAL CONFERENCE

‘SHARING THE BURDEN – TAX REFORMS SHIFTING WINNERS AND LOSERS’
Wednesday 17 January – Friday 19 January 2018
Monash University, Caulfield campus
WELCOME

The Australasian Tax Teachers Association (ATTA) invites members of academia, industry, government and the tax profession to the 30th annual conference hosted by Monash University in Melbourne, Australia. We would like to officially recognise our 2018 sponsors, the Department of Business Law and Taxation within Monash Business School, Oxford University Press, Thomson Reuters, CPA Australia, UniSuper and Just Tax Consulting.

Since its inception the ATTA conference has provided a forum for the presentation of research, scholarship and teaching in all aspects of taxation. The ATTA annual conference provides tax academics across Australasia and the rest of the world the opportunity to develop their research and teaching networks and doctoral students to present their work in a stimulating and encouraging forum. This year we are privileged to have keynote speakers from the judiciary, government and the professional bodies; The Honourable Justice Tony Pagone from the Federal Court of Australia, Andrew Mills, Second Commissioner Law and Design and Practice, Australian Taxation Office, Ali Noroozi Inspector-General of Taxation, Paul Drum, Head of Policy and Policy and Corporate Affairs, CPA Australia and Ian Taylor, Chair of the Tax Practitioners Board.

In addition to our keynote speakers the conference will include presentations by leading Australasian academics, PhD students, practitioners and government officials from a wide range of countries including New Zealand, China, USA, India, Indonesia and Malaysia.

Monash Business School is delighted to be hosting this event and welcome all delegates to take part in the three days of engaging presentations, plenaries and social events.

Ken Devos on behalf of the ATTA organising committee:

Ken Devos ken.devos@monash.edu
Diane Kraal diane.kraal@monash.edu
Jonathan Teoh jonathan.teoh@monash.edu
Toan Le toan.le@monash.edu
Wayne Gumley wayne.gumley@monash.edu
Shafi Khan shafi.khan@monash.edu

Events team:

Kerry Allison kerry.allison@monash.edu 0411 280 520
Hannah Sweetman hannah.sweetman@monash.edu 0406 061 456
Lesley Soan lesley.soan@monash.edu 0423 224 784
# CONFERENCE PROGRAM

## SHARING THE BURDEN – TAX REFORMS SHIFTING WINNERS AND LOSERS

### WEDNESDAY 17 JANUARY 2018

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<tr>
<td>10.00 – 10.20am</td>
<td>Morning Tea</td>
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<tr>
<td>10.20 – 10.30am</td>
<td>Welcome, <a href="#">Ken Devos</a>, Monash Business School</td>
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<td><a href="#">Jasonne Grabher</a>, CPA Australia</td>
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<td>10.35am – 10.50am</td>
<td>PhD Presentations, Chair: Diane Kraal</td>
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<td>10.35 – 11.00am</td>
<td><a href="#">Melissa Belle Isle</a>, Griffith University</td>
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<td>Is the Level of Literacy of Small Business Owners Important for Cashflow Management?: An Expert’s Perspective</td>
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<td>11.00 – 11.25am</td>
<td><a href="#">Jim McMillan</a>, University of South Australia</td>
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<td>Tax Audits in Indonesia: Growing the Tax Base</td>
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<td>11.25 – 11.50am</td>
<td><a href="#">Kristian Agung Prasetyo</a>, Curtin University</td>
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<td>Developing a Model for Enhancing Indonesia’s Tax Administration System</td>
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<td>11.50am – 12.15pm</td>
<td><a href="#">Emily Millane</a>, Australian National University</td>
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<td>Superannuation as Welfare: The Post War Move to Abolish the Means Test and Introduce Contributory Old Age Pension</td>
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<td>12.15 – 12.55pm</td>
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<td>1.00 – 2.15pm</td>
<td><strong>1A: PhD Presentations, Venue: H235, Chair: Diane Kraal</strong></td>
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<td><a href="#">John Harrison</a>, University of Adelaide</td>
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<td>The Inequitable History of the Taxation of Superannuation Law, Confirmed by Vertical Inequity in Its Current Design, Compels Further Reform</td>
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<td>1.00 – 1.25pm</td>
<td><a href="#">Nikolay Shekhovtsev</a>, University of Canterbury</td>
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<td>One More Thought on the Issue of Tax Compliance Cost Burden for Large Enterprises in New Zealand: An Application of Rational Choice Model to Tax Compliance Administration</td>
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<td>1.25 – 1.50pm</td>
<td><a href="#">Le Phuong Dung</a>, RMIT</td>
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<td>Can Tax Drive Investment?</td>
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<td><a href="#">Christine Peacock</a>, Federation University Aust.</td>
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<td>Using Imputed Values to Tax the Consumption of Owner-Occupied Housing on a Periodic Basis</td>
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<td><a href="#">Dylan Hobbs</a>, Victoria University of Wellington</td>
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<td>Land Value Taxation in New Zealand, 1929–1952</td>
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<td><a href="#">Dylan D. Damon</a>, University of Sydney</td>
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<td>The Transfer Pricing of Marketing Intangibles in the OECD’s Post-BEPS World</td>
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<td>2B: Teaching</td>
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<td>Benjamin Walker, Vienna</td>
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| 09.00 – 9.20am | Official welcome: **Professor Robert Brooks – Interim Dean**  
Opening by ATTA President: **Associate Professor Brett Freudenberg**  
Welcome from the ATTA organising committee | The Pavilion |
| 09.20 – 10.10am | Miranda Stewart to introduce:  
**Keynote:** The Honourable Justice Tony Pagone (Federal Court of Australia) | The Pavilion |
| 10.10 – 11.00am | Diane Kraal to introduce:  
**Keynote:** Andrew Mills, Second Commissioner, Law Design and Practice, Australian Taxation Office | The Pavilion |
| 11.00 – 11.25am | Morning Tea                                                                               | The Pavilion |
| 11.30am – 1.00pm | **Parallel Sessions 3**  
**3A: CGT/Tax Reform**  
Venue: H235  
Chair: Dominic Carbone  
**Khusnaini,** Politechnic of State Finance Stan (Indonesia)  
Improving Voluntary Compliance of Small Business Owners in Indonesia Through Taxpayer Education  
**Alistair Hodson,** University of Canterbury  
The Spinning Wheel – Inland Revenue’s New Compliance Model: Why the Change and Does It Really Matter?  
**Adrian Sawyer,** University of Canterbury and Kerrie Sadiq, Queensland University of Technology  
Enhanced Tax Reporting Requirements Under the BEPS Project: Preparing the Profession and Their Clients | The Pavilion |
| 12.00 – 12.30pm | **3B: Compliance**  
Venue: H237  
Chair: Shafi Khan  
**Khusnaini,** Politechnic of State Finance Stan (Indonesia)  
Improving Voluntary Compliance of Small Business Owners in Indonesia Through Taxpayer Education  
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Enhanced Tax Reporting Requirements Under the BEPS Project: Preparing the Profession and Their Clients | The Pavilion |
| 12.30 – 1.00pm | **3C: Compliance/Administration**  
Venue: H238  
Chair: Ken Devos  
**Alistair Hodson,** University of Canterbury  
The Spinning Wheel – Inland Revenue’s New Compliance Model: Why the Change and Does It Really Matter?  
**Adrian Sawyer,** University of Canterbury and Kerrie Sadiq, Queensland University of Technology  
Enhanced Tax Reporting Requirements Under the BEPS Project: Preparing the Profession and Their Clients | The Pavilion |
| 12.30 – 1.00pm | **3D: International**  
Venue: H223  
Chair: Diane Kraal  
**Livia Gonzaga,** University of New South Wales  
Country by Country Reporting: A New Dimension in Taxpayer Compliance Obligations | The Pavilion |
<p>| 1.00 – 1.55pm | Lunch                                                                                     | The Pavilion |</p>
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<td>Women with Top Incomes: Winners in the Tax System?</td>
<td>Miranda Stewart, Crawford School of Public Policy, ANU</td>
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<td>5A: Tax Issues</td>
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## FRIDAY 19 JANUARY 2018

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| 9.00 – 9.45am| Ken Devos to Introduce:  
Keynote: **Paul Drum, Head of Policy, CPA Australia**                                   | The Pavilion |
| 9.45 – 10.30am| Ken Devos to Introduce:  
Keynote: **Ali Noroozi, Inspector-General of Taxation**                                  | The Pavilion |
| 10.30 – 10.35am| UniSuper Sponsor’s Address                                                              | The Pavilion |
| 10.35 – 10.55am| Morning Tea                                                                             | The Pavilion |
| 10.55 – 11.35am| Patron’s Address                                                                        | The Pavilion |
| Parallel Sessions 6 |  
11.40am – 1.10pm  
**6A: Tax Issues/Empirical**  
Venue: H235  
Chair: Michael Dirkis  
**6B: Tax Policy**  
Venue: H237  
Chair: Andrew Smith  
**6C: VAT/GST**  
Venue: H238  
Chair: Ken Devos | The Pavilion |
| 11.40am – 12.10pm| Robert Deutsch, **UNSW**  
Hughlene Burton, **UNC**  
Charlotte Stewart Karlinsky, **San Jose State University and Binh Tran-Nam, UNSW**  
Perception of Large and Medium Business Tax Law Complexity: A Preliminary Australian Study | The Pavilion |
| 11.40am – 12.10pm| Tamara Larre, **University of Saskatchewan**  
How Canadian Governments Have Used the Idea of “Winners” and “Losers” to Gain Political Favour | The Pavilion |
| 11.40am – 12.10pm| Mahmoud Abdellatif, **Qatar University and Binh Tran-Nam, UNSW**  
The Appropriate Tax Treatment of Financial Services Under Proposed Value-added Tax in Qatar in Accordance with the Experience of Developed Countries | The Pavilion |
| 12.10 – 12.40pm| Andreas R. Dewantara and Riko Riandoko, **Indonesian State College of Accountancy**  
Bad Leader For Bad Game: Empirical Study of Harmful Tax Competition in ASEAN Countries Using Nash-Stackelberg Competition Approach | The Pavilion |
| 12.10 – 12.40pm| John McLaren, **Charles Darwin University**  
Laws to Protect Tax Whistleblowing in Australia: What Does This Mean For Taxpayers and the Taxation Profession? | The Pavilion |
| 12.10 – 12.40pm| Appadu Santhariah, **RMIT**  
Binh Tran-Nam, **UNSW**  
Dale Boccabella, **UNSW and Nthati Rameste, RMIT**  
Potential Issues Perceived by Malaysian Business Taxpayers Due to the Implementation of Goods and Services Tax 2015 | The Pavilion |
| 12.40 – 1.10pm| Steven Stern, **Victoria University**  
Sharing the Burden – Tax Reform’s Shifting Winners and Losers: The Taxation Treatment of Non-Australian Currency Gains and Losses | The Pavilion |
| 12.40 – 1.10pm| Silvy Christina and Christine Tjen, **University of Indonesia**  
The Effect of Tax Aggressiveness on Debt Policy with Independent Board as Moderating Variable | The Pavilion |
<p>| 12.10 – 1.10pm| <strong>ATTA Executive Meeting</strong>                                                               | H8.17      |
| 1.10 – 2.05pm| Lunch                                                                                   | The Pavilion |</p>
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<th>Time</th>
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| 2.10 – 3.10pm | **7A: International**  
Venue: H235  
Chair: Shafi Khan | Hope Ashiabor,  
*Macquarie University* and  
Dahliana Hasan, *University of Gadjah Mada*  
Taxes and the Path to Environmental Sustainability in Indonesia  
Julie Cassidy,  
*The University of Auckland* and  
Michael Blissenden, *University of Western Sydney*  
Tax Disputes: Sharing the Burden of Resolution Between Taxpayers and Tax Office; An Evaluation of the NZ Regime and Lessons for Reform for Australia  
Jonathan Barrett, *Victoria University of Wellington*  
Human Flourishing, Taxation and Engagement with Urban Housing Problems |
| 2.40 – 3.10pm | **7B: Tax Disputes**  
Venue: H237  
Chair: Jonathan Teoh | Andrew M. C. Smith, *Victoria University of Wellington*  
Will BEPS Allow New Zealand to Finally Tax Google?  
Melinda Jone and Andrew Maples, *University of Canterbury*  
Small Tax Disputes Resolution in New Zealand: Making Taxpayers “Winners” not “Losers”  
Samiksha Agarwal and Lekha Chakraborty, *National Institute of Public Finance and Policy (New Delhi, India)*  
Corporate Tax Incidence in India |
| 3.15 – 4.15pm | **7C: Tax Issues**  
Venue: H238  
Chair: Nthati Rametse | ATTA Annual General Meeting  
The Pavilion |
| 4.15 – 4.30pm | Closing Words, Prize-giving and ATTA 2019  
The Pavilion |
| 4.30 – 6.30pm | Farewell Social Event  
The Pavilion |
KEYNOTE SPEAKERS

THE HONOURABLE JUSTICE PAGONE
FEDERAL COURT OF AUSTRALIA

Justice Tony Pagone was appointed to the Federal Court of Australia in June 2013. Prior to this appointment, he was a judge of the trial division of the Supreme Court of Victoria and had been the judge in charge of the Commercial Court of that Court.

Justice Pagone graduated from Monash University in 1979 with a Bachelor of Laws and from Cambridge University with a Master of Laws in 1983. In 2014 he was awarded an LLD from the University of Melbourne for his research and published work on anti-tax avoidance provisions.

He was admitted as a legal practitioner in 1980, signed the roll of counsel in 1985, and was appointed Queen’s Counsel for Victoria in 1996. During his career at the Bar, Justice Pagone practised widely in taxation law, commercial law, administrative law, constitution law, public and human rights law.

He was also Special Counsel to the Australian Taxation Office between 2002 and 2004. He is a professorial fellow of the Melbourne Law School and lectures in several post-graduate courses at the Melbourne Law School and from time to time in the Law Faculty at Monash University. Justice Pagone is a vice president of the International Association of Judges.

ANDREW MILLS
SECOND COMMISSIONER LAW DESIGN AND PRACTICE
AUSTRALIAN TAXATION OFFICE

Andrew has overall responsibility for the ATO’s law practice, including law interpretation, dispute resolution and the ATO’s role in policy and law design.

Andrew has more than 30 years of experience in taxation, including periods in the ATO, commerce and the tax profession.

Andrew was a Director at Greenwoods & Freehills for more than 20 years and managing director of the firm from 2006–2011. Andrew was President of the Tax Institute in 2006–2007, is a former Governor of the Taxation Research Foundation and also represented industry bodies across a number of sectors.

Andrew holds a Bachelor of Business, a Master of Laws and a Graduate Diploma in Tax Law. He is a Chartered Taxation Adviser (Life) of The Tax Institute, a member of the International Fiscal Association and a graduate of the Australian Institute of Company Directors.
PAUL DRUM
HEAD OF POLICY, POLICY & CORPORATE AFFAIRS, COMMERCIAL CPA AUSTRALIA

Paul has worked in the tax and business policy arena for over 30 years, principally in Australia but also in Malaysia, Hong Kong, Singapore, Indonesia, and New Zealand.

As Head of Policy at CPA Australia, his portfolio covers tax policy, law and administration, as well superannuation, business policy, and education, as well as representation and advocacy to governments and core government agencies.

He is a fellow member of CPA Australia, a Chartered Tax Adviser, and a member of the Australian Institute of Company Directors.

Paul is also CPA Australia’s leading speaker on tax issues in the Australian media.

ALI NOROOZI B.ENG LLB LLM
INSPECTOR-GENERAL OF TAXATION AUSTRALIAN GOVERNMENT

Ali was appointed as the IGT for an initial term of five years on 6 November 2008. On 6 November 2013 he was re-appointed to the role for a further term of five years.

He holds degrees in Engineering and Law, including a Masters of Law specialising in taxation.

Prior to his appointment as the IGT, Ali had gained more than 15 years of experience in taxation, including working at leading international accounting and law firms in Australia and the United Kingdom.
ABSTRACTS

Wednesday 17 January 2018 from 10.35am – 12.15pm

PhD PRESENTATIONS

1  IS THE LEVEL OF LITERACY OF SMALL BUSINESS OWNERS IMPORTANT FOR CASH FLOW MANAGEMENT: AN EXPERTS’ PERSPECTIVE
MELISSA BELLE ISLE, GRIFFITH UNIVERSITY

Attendance at the Australian Tax Teachers Conference in January 2018 at Monash University is of great importance in assisting with my PhD. There are a very small number of academics at Griffith University and other locally based universities in Queensland who have a research interest in Taxation especially in relation to small business. Attending a national conference that focuses on taxation allows me to network with other tax academics and receive feedback from them on the progress of my PhD.

At present I have just completed the second stage of my data collection. This involved interviewing small business taxation experts. Analysis of this data is expected to be completed by the end of October for this stage of my research. It is my intention to present the findings for the first time at the ATTA conference. This stage of the research included experts residing in fields of academia, accounting, the Australian Tax Office and advocates for Australian small businesses. It is likely, based on previous years’ attendees, that a number of these expert groups will be represented at the ATTA conference. This could spark further interest from these expert groups that may assist with securing participants for the final stages of my project.

Along with the benefits that the ATTA conference can provide for my research project, I also believe that attending ATTA is advantageous in building long term friendships and support from other tax teachers in Australia. I have attended ATTA in 2012, 2014 and 2016 and have met some wonderful people that have been very supportive of my Honours research (completed in 2014) and now my PhD. I always feel more inspired and excited about my research after I have spent time at the conference.

Being successful in obtaining the ATTA scholarship would allow me to use the funds that would have paid for ATTA in my research account to pay for upcoming expenses related (but not limited to) transcribing interviews, purchasing participant gifts and editing services for my thesis.

2  FACTORS INFLUENCING TRUST IN AND POWER OF TAX AUTHORITY
MARDHIAH, UNIVERSITY OF CAMBERRA

Recently, the Slippery Slope Framework has been used by several researchers on tax compliance. This framework tries to accommodate two approaches in tax compliance, economic and behavioural approach, and correlates tax compliance with trust in and power of tax authority. However, there is limited research explores in detail on the factors influencing trust in and power of tax authority. There is also no research that triangulates these perceptions of taxpayers with tax office perspective. Most of them only focus on taxpayer perspective. Therefore, this study is intended to answer questions on how does taxpayer’s perception influence tax (non)compliance, and how does tax authority manage and improve the compliant behaviour among taxpayers, based on the Slippery Slope Framework.

Using mixed methods, this study employs 500 individual taxpayers as survey respondents to investigate factors (such as: perception of fairness, perception of complexity, perception of corruption, tax knowledge, attitude and norm, tax audit, and penalty rates) that could affect the perceptions of trust in tax authority and power of tax authority and how these perceptions correlate with compliance behaviour amongst taxpayers. To increase the robustness of the data, several interviews were conducted to taxpayers to explain reasons behind their perceptions and to collect new insights that were not captured in the survey questionnaire. And in picturing tax office policy in increasing tax compliance, interviews were also conducted to tax officers. The triangulation between survey and interview data is expected to increase the robustness of this study.
Preliminary result of the survey (in terms of perception of complexity, corruption, and fairness) shows that the respondents perceived the tax systems are moderately complex especially in terms of number of computation, law ambiguity, frequent law changes, and excessive detail needed. On the other hand, the respondents perceived that the document requirement and the form of tax return are less complex.

Regarding perception of corruption, most respondents perceived that corruption, whether in big or small amount of money, is still commonly happened in Indonesia. However, there is a better perception on small corruption in Indonesia. Respondents are likely to less agree when given a statement that small corruption in small office is high.

To investigate the perceptions of fairness, it is divided into three types of fairness, procedural fairness, distributive fairness, and retributive fairness. For procedural fairness, the respondents perceived the tax system are procedurally fair. However, there is a less fair perception in distributive fairness where most respondents perceived that they received fewer public provisions compared to income tax they paid. Meanwhile, in retributive fairness, most respondents are likely to agree that punishment should apply to non-compliant behaviour.

These survey initial findings need to be triangulated with interview results and require further test to gain final conclusion. However, these can be used as a basic tool to analyse the results from interviews with taxpayers and tax officers, and later to triangulate the results of survey and interview.

3 TAX AUDITS IN INDONESIA: GROWING THE TAX BASE
JIM MCMILLAN, UNIVERSITY OF SOUTH AUSTRALIA

Indonesia is not only one of Australia’s nearest neighbours – it is also one of the world’s fastest growing economies. Already the world’s 8th largest economy, by 2030 it will be the 5th largest and by 2050 the 4th largest (according to a recent PwC study).

Indonesia has many challenges including, in particular, an inability to mobilise tax revenue to fund Government infrastructure projects and social development programs. In 2016, Indonesia’s revenue to GDP ratio was 10.1%, compared with Indonesian President Widodo’s short-term target of a 15% tax to GDP ratio and also the better revenue mobilisation performance of Indonesia’s South-East Asian neighbours.

This presentation will examine the interaction between Indonesia’s tax collection performance and the design and operation of its tax compliance system. In particular, the talk will cover some of the peculiar features of Indonesia’s tax compliance approach and recommendations made by the OECD, World Bank and IMF, to improve tax collection efficiency, which have not yet been adopted by the Indonesian Government. Comparisons with the Australian experience will be considered.

The presentation will also address aspects of tax compliance theory, and the distortionary impact of Indonesian tax compliance approaches when viewed in the context of the theoretical model.

Tax compliance may be a dry subject. But it has a direct impact on a country’s capacity to generate revenue to fund its economic development, and the presentation will conclude with observations about how small changes in the tax compliance approach may be able to effect major changes in outcomes.

4 DEVELOPING A MODEL FOR ENHANCING INDONESIA TAX ADMINISTRATION SYSTEM
KRISTIAN AGUNG PRASETYO, CURTIN UNIVERSITY

This paper reports findings from a study conducted into the current Indonesian tax administration. This study involved seventeen interviews conducted with a cohort of twelve participants from multiple settings which included the Indonesian tax office, taxpayers, a tax trainer, academia, and a non-governmental organisation focusing on Indonesian taxation. Findings here reveal that there are several factors that are considered important to improve the Indonesian tax office’s organisational performance. These include internal factors – such as religiosity, teamwork, peers, and attitude towards job – and external factors, such as third party support. Also evidenced are gaps in the operations of the Indonesian tax office that may undermine their performance. These gaps include firstly, an expectation and communication gap between staff and their superior and secondly, an expectation gap between taxpayers and the tax office. These three factors – internal factors, external factors, and gaps – imply that there are additional avenues that can be used by the Indonesian tax office to improve their effectiveness in optimising revenue collection on top of traditional undertakings such as conducting audits or imposing penalties.
5  SUPERANNUATION AS WELFARE: THE POST-WAR MOVE TO ABOLISH THE MEANS TEST AND INTRODUCE CONTRIBUTORY OLD AGE PENSIONS

EMILY MILLANE, AUSTRALIAN NATIONAL UNIVERSITY

This paper considers superannuation policy in the 1960s, and the Hancock Inquiry on National Superannuation initiated by the Whitlam Government in 1974. Important ideas about national superannuation emerged at this time, including the need to protect individuals from a dramatic drop in income after ceasing paid work.

Arguably, the 1970s were the last time that Australian superannuation was considered under a welfare rubric, as opposed to an industrial relations one. While this means that the period of the 1960s and 1970s exhibit path dependent characteristics, this presentation also argues that significant shifts in thinking were taking place about superannuation at this time – shifts which meant that the Labor Party embraced contributory pension financing.

The 1970s were a time of ferment about incomes for all ages, but especially for the aged. Increasing levels of old age poverty, and the impact of high inflation on fixed pension incomes were drivers of the re-consideration of social policy in this area. Both sides of politics were committed to abolishing the pension means test, and needed a way of financing its abolition – superannuation was the preferred way to finance this.

A state-based, contributory pension scheme as proposed by the Hancock Committee of Inquiry was a significant departure from previous Labor Party policy, which opposed the contributory approach to welfare in favour of an age pension financed from general revenue. This policy shift was not driven by the community or by unions, but by emergent thinking in the United Kingdom and among Australian academics at the Melbourne Institute of Economic and Social Research, about superannuation as a universal right. The British Labour Party had created its own superannuation scheme in 1669, based on the two pillars of a universal pension and contributory superannuation. The idea of superannuation was also driven by the emergent middle class, with its expectations of higher standards of living across the life course.

The presentation draws on archival research and interviews with key individuals, including Chair of the Hancock Inquiry, Keith Hancock, and former members of Gough Whitlam’s private staff.

Wednesday 17 January 2018 from 1.00pm – 2.15pm
PhD Presentations (Parallel Sessions)

1A – PhD PRESENTATIONS

1  THE INEQUITABLE HISTORY OF THE TAXATION OF SUPERANNUATION LAW, CONFIRMED BY VERTICAL INEQUITY IN ITS CURRENT DESIGN, COMPELS FURTHER REFORM.

JOHN HARRISON, UNIVERSITY OF ADELAIDE

This article takes a historical examination of superannuation law reform and observes its resulting complexity through constant tinkering. Australian Governments over the years have adopted or ignored recommendations from various inquiries addressing superannuation reform. Major drivers of reform have included efficiency, flexibility, member protection, integrity, sustainability and equity, that together support a sound system.

The Hawke/Keating Governments established an equitable framework providing concessions up to Reasonable Benefit Limits (RBLs). This framework was largely undermined by the Howard Government’s Simpler Super policy that abolished RBLs, allowed large contribution levels and also permitted pensions and lump sums to be tax free. Superannuation became a very attractive wealth creation tool for high income earners.

The Turnbull Government’s most recent law changes have put back the spotlight on equity. However, such reforms have only been a small step, bringing equity back towards the Keating RBLs. Of import, the Turnbull Government has yet to deliver reform in accord with the Superannuation Objective but options are clearly available. Further legislative reforms must be enacted to redress the imbalance of tax concessions between high income earners and low income earners, in order to make the superannuation system more equitable.
This paper also seeks to confirm the equity or inequity in the taxation of the superannuation system, by reference to the principles of horizontal and vertical equity. The research reviews the taxation treatment of the main components in superannuation regarding contributions, fund income and benefits.

The superannuation system is complex and various, and 28 of its main components have been reviewed. It is found that the design of the taxation of superannuation has substantial horizontal and vertical equity given most of the elements meet these criteria.

However, vertical inequity in the taxation of superannuation remains significant for 3 elements given high marginal rates of tax apply. High income earners benefit most from the concessional design of the taxation of contributions, fund income and benefits. Notably, income from the grandfathering of assets exceeding the $1.6m cap, also receives concessional taxation treatment.

This detailed analysis lends support to the widely held view that the superannuation system is inequitable given high income earners receive the greatest tax concessions in comparison to low income earners, who receive little or none.

2 CAN TAX DRIVE INVESTMENT?
LE PHUONG DUNG, RMIT

Classical tax systems and imputation systems are tools not only to generate government revenue but just as importantly to stimulate economic growth. This paper examines the effects of tax system changes and corporate tax payout on capital investment. We would expect a change in capital investment when the corporate tax payout changes and also when there is a shift from one tax system to another. This study examines the effects on capital investment of (1) corporate tax payout in Canada and the United Kingdom (1981–2015); and (2) when changing from a classical to an imputation tax system in Australia (1981–2002) and Taiwan (1989–2013). By employing fixed effect models, our findings show that payout tax within the imputation tax system of Canada and The United Kingdom increase capital investment. Our findings also suggest that moving from a classical to an imputation system had an impact on capital expenditure for firms in both Australia and Taiwan. However, we did not find a strong relationship between tax payout and capital investment within a classical system. Overall, our findings suggest that corporate tax payout led to an increase in investment of firms within imputation tax systems and that changing from classical to an imputation system can also increase the capital expenditure of firms, but payout tax within a classical tax system has a minimal impact.

3 LAND VALUE TAXATION IN NEW ZEALAND, 1929 – 1952
DYLAN HOBBS, VICTORIA UNIVERSITY OF WELLINGTON

This article is part of a larger thesis that examines the historical use of land value taxation by the New Zealand central government over the period 1890 – 1990. It focuses on the period from 1929 to 1952, covering how development and operation land tax was affected by the fall of the conservative Reform government in 1928 and how the Great Depression throughout the 1930s drove further alterations. The paper also examines the changes implemented after 1935 following the election of New Zealand’s first Labour government, with its plans to make both New Zealand society and taxation more equitable, and those made by the first National government in the early 1950s. Also covered is the development of underlying issues, inherent within the land tax design and long overlooked, throughout the period which had seriously compromised the legislation by 1952. The work adopts qualitative research methods to explore how tax policy progressed and what were the relevant influences on policy direction.

The primary aim of this study is to examine what were the key elements of the New Zealand approach to land value taxation, how the tax policy developed and how the tax functioned. To this end the study adopts a historical institutionalist framework to analyse the influence of institutional factors, particularly the state, ideas and politics, on the policy’s development in an attempt to understand how important these were. The work is primarily document based making use of a variety of historical sources including, government records and publications, legislation, parliamentary debate records, court records and media coverage.
1B – PhD PRESENTATIONS

1 ONE MORE THOUGHT ON THE ISSUE OF TAX COMPLIANCE COST BURDEN FOR LARGE ENTERPRISES IN NEW ZEALAND: APPLICATION OF RATIONAL CHOICE MODEL TO TAX COMPLIANCE ADMINISTRATION
NIKOLAY SHEKHOVTSEV, UNIVERSITY OF CANTERBURY

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

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

2 USING IMPUTED VALUES TO TAX THE CONSUMPTION OF OWNER-OCCUPIED HOUSING ON A PERIODIC BASIS
CHRISTINE PEACOCK, FEDERATION UNIVERSITY

There has been suggestions in the tax literature that instead of taxing the consumption of owner-occupied housing at the time of the original purchase of the property, this could be done on a periodic basis. For example, in 1955 Kaldor suggested exempting the purchase of a house from expenditure tax and imposing an annual charge on the value of the benefits that derived from its possession.1 At a more theoretical level, in 2011 in the Mirrlees Review Report it was written that “[i]f we want to tax the consumption value of housing… it is probably best to do so at the point at which the services are consumed rather than at the point of first purchase. That suggests an annual tax related to the (consumption) value of the property.”

Imputed rent has been regarded as part of the tax base for income tax purposes in several countries, including Australia, France, Germany, the Netherlands, Sweden and the United Kingdom.2 In 1938, Simons wrote in particularly positive terms about Australia’s system of regarding imputed rent on owner-occupied housing as part of the income tax base, which existed at a national level from 1915 until 1923.

The perceived potential administrative problems which may occur in collecting tax from imputed rental values on a periodic basis appears to be one of the main reasons why there is no country which taxes the consumption of owner-occupied property in this way. While valuing assets in general may have been problematic historically, this does not appear to be the case today. Revenue authorities have more sophisticated technology to assist in the administration of increasingly complex tax laws. Further, real values of residential property are utilised for tax purposes (including local council rating) in many jurisdictions.

Another concern that has been raised is that if the consumption of owner-occupied housing were taxed on a periodic basis, people on lower incomes (including those with little cash income) may be at a disadvantage. Perhaps there could be a way to deal with this. For example, social assistance could be considered for those who could genuinely claim that they would be unreasonably disadvantaged.

5. Institute for Fiscal Studies, above n 2, 390.
This paper will revisit the idea of using imputed values to tax the consumption of owner-occupied housing. It will consider whether this will achieve a closer alignment with the goal of taxing a consumer on their consumption. Whether such an approach is practical will also be considered, along with how such an approach might be perceived by the public.

3 THE TRANSFER PRICING OF MARKETING INTANGIBLES IN OECD’S POST-BEPS WORLD
DYLAN D. DAMON, UNIVERSITY OF SYDNEY

This paper critically evaluates the tax treatment of marketing intangibles for transfer pricing purposes in the context of Actions 8-10 of the OECD Action Plan on Base Erosion and Profit Shifting (BEPS) and the revised Transfer Pricing Guidelines. Marketing intangibles have long represented the bane of tax authorities in the transfer pricing world. This is the upshot of the unique characteristics that marketing intangibles embody vis-à-vis trade intangibles that result in more nebulous source of value creation. Consequently, information asymmetries between taxpayers and tax authorities are at their highest in respect to marketing intangibles.

The paper postulates that marketing intangibles will be where the future conflicts between taxpayer and tax authorities will be fought in Australia. This predominately stems from the fact OECD has not fully come to terms with the unique attributes of marketing intangible and has formulated its policy in this subject area almost as an afterthought. The problem is exacerbated by the OECD’s heightened emphasis on the assumption of risk as a proxy for value creation. It is argued that this approach, while mildly amendable to trade intangibles, does not produce outcomes that are grounded in economic reality with respect to marketing intangibles and in some cases may produce anomalous outcomes.

The arguments propounded by this paper establish economic rent as the critical component of value creation by marketing intangibles. Economic rent represents the culmination of the synergistic interaction of trade and marketing intangibles. However, the association of the assumption of risk with value creation gives precedence to a more restrictive interpretation of the concept of economic rent. This is identified as the cornerstone of the BEPS problem and constrains the efficacy of the arm’s length principle as an allocation rule for income between associated enterprises.

In recognition of the above problems, the paper concludes by proposing a remedy for the valuation of marketing intangibles that maintains consistency with the arm’s length principle and the current OECD framework. This draws upon an expanded definition of economic rent and an interpretation of the arm’s length principle that allows contributory profit split analysis to be determined through income based valuation techniques.

Wednesday 17 January 2018 from 2.35pm – 4.25pm (Parallel Sessions)

2A – PhD PRESENTATIONS

1 LEGISLATIVE CONSIDERATION TO ADDRESS TRANSFER PRICING: COMPARATIVE STUDY OF INDONESIA AND CHINA
ANDY WARDHANA, QUEENSLAND UNIVERSITY OF TECHNOLOGY

The objective of this study is to examine the legislative considerations on addressing aggressive transfer pricing in Indonesia and China. Transfer pricing refers to the price at which an enterprise transfers its physical goods and intangible property or provides services to associated enterprises (OECD, 2010). Often, multinational enterprises (MNEs) employ aggressive transfer pricing to shift profit from high to low tax jurisdictions. This tax minimization strategy used by MNEs affects Government’s tax revenue, and it is estimated that the size of potential tax loss in developing countries is bigger than in developed countries. However, less attention has been paid to how developing countries respond to aggressive transfer pricing. In determining whether an alternative transfer pricing regime should be adopted Indonesia, this research considers China’s transfer pricing regime as a different model. Thus, this study undertakes a comparative tax law analysis to examine Indonesia’s position as compared to the jurisprudence of China.
This study considers Zweigert & Kötz’s (1992) functional approach to comparative law. By comparing and contrasting the legislation to identify similarities and differences, it reveals that the compared countries’ transfer pricing regulation can be divided into three major themes: the adoption of the arm’s-length principle, transfer pricing treatment on business profits, and taxes on intangible property and interest. Findings show that Indonesia and China have adopted transfer pricing regimes to ensure that corporate profit is taxed in the location of economic activity. Indonesia’s transfer pricing regime conforms to the OECD transfer pricing guidelines, while China’s transfer pricing regime of location specific advantage – benefit related to geographic location – deviates from the OECD guidelines. China arguably introduces an alternative transfer pricing regime that reflects the realities of developing countries. The comparative law of China potentially offers a solution to the legal problem of transfer pricing in developing countries. In particular, this study offers insights from China that could potentially inform Indonesia’s policy maker to consider the location specific advantage regime to address aggressive transfer pricing.

2 CROSS-BORDER PROFIT SHIFTING: EVIDENCE FROM INDONESIA
ARNALDO PURBA AND ALFRED TRAN, AUSTRALIAN NATIONAL UNIVERSITY

Prior studies suggest that profit shifting by multinational enterprises (MNEs) happens not only in developed countries but also in developing ones. However, the knowledge of profit shifting in developing countries is very limited, because the findings of most of the existing studies are difficult to interpret mainly due to problems of reliability of data and method used to measure profit shifting (Fuest and Riedel 2012). In some cases, data needed for empirical studies are simply not available (the Organisation for Economic Co-operation and Development/OECD, 2015a). Also, many studies on developing countries are reports that have not been exposed to critical peer review (e.g. Baker, 2005; Christian Aid, 2009; Oxfam, 2000). In the last couple of years, empirical research that focuses on finding evidence of profit shifting by MNEs in developing countries has upsurged, but the need for improvement in terms of data and methods remains.

This paper examines whether foreign MNEs operating in Indonesia shift profits out of the country by following an approach introduced by Hines and Rice (1994) (hereafter HRA) with some modifications. HRA has been widely cited in the literature of international tax avoidance. Therefore, we expect that using HRA will enhance the reliability of the evidence provided by our paper. The basic premise of HRA is that pre-tax income consists of two elements: (1) “true” income, i.e. income produced from utilising capital and labour inputs; and (2) “shifted” income, i.e. income shifted in response to the tax incentive in the form of tax rate difference between the parent and the affiliate (Dharmapala, 2014b). While HRA was initially used to examine whether US MNE affiliates operate in 59 different jurisdictions utilize profit shifting strategies, we believe that the approach also is suitable for our paper. The main reason is that the HRA basic premise is based on the Cobb-Douglas production function which is applicable to both firm-level and country-level studies.

We use Indonesia confidential tax return data from 2009 to 2015 supplied by the Indonesian tax authority under a data non-disclosure agreement. Compared to financial data, tax return data can better capture the existence of profit shifting by MNEs (OECD, 2015a).

After analysing a final sample of 3,188 firm-year observations, we find that MNEs operating in Indonesia do shift profits to low tax jurisdictions in which the parents are located. On average, a one percentage point higher tax rate of Indonesia than that of the parent country decreases taxable income reported by foreign MNEs in their Indonesian tax return by 2.89%. Another crucial finding is that the magnitude of profit shifting is high and is relatively stable from 2010 to 2012. It then slowed down in 2013 and 2014 but jumped back to its peak level in 2015. We suspect that the inconsistent behaviour of the MNEs to shift profits from Indonesia is likely to be associated with the fact that Indonesia joined the global BEPS project to tackle profit shifting in 2013 but has not taken any substantive actions to reduce profit shifting ever since.
3 A WHOLE NEW GAME OR THE ONLY GAME IN TOWN – AN ASSESSMENT OF THE PROFIT SPLIT METHOD

FEI GAO, UNIVERSITY OF SYDNEY

Profit split method (PSM) is a unique transfer pricing method that treats the multinationals as integrated enterprise, rather than separate entities. It is arguably the most reliable method to be applied to highly integrated enterprises. With the intention to provide more guidance for this method, the OECD released a public discussion draft on 22 July 2017 on the BEPS Action 10. This revised discussion draft replaces the draft released for public comment in July 2016, to build on the existing OECD Transfer Pricing Guidelines. Some commenters believe that the new draft, as well as the Practical Manual on Transfer Pricing for Developing Countries released by the United Nations earlier this year, is in favour of the developing countries, which helps them to get more share of the tax base with the application of the PSM. For instance, the discussion draft asks for comments on whether to add new profit splitting factors that "headcount of similarly skilled and competent employees", which may be in favour of the countries with lower labour cost, such as China and India. This debate appears to reflect the continuing tension between developed and developing countries in the design of the international tax regime.

This paper provides an overview of the transactional PSM, in the context of global value chains, comparing the pre-BEPS and post-BEPS application of this method, and identifying a number of issues and concerns in its application. The paper argues that PSM has been strengthened in some aspects. For instance, it has move from heavily relying on risk assessment to evaluating the unique contributions made by related parties. Also, the new draft provides additional guidance on determining the profit to be split (when to use actual profit or anticipated profit), and how the profit should be split (when to use contribution analysis or residual analysis).

On the other hand, the PSM has certain weaknesses, which concern BEPS project’s observers. For example, the OECD is not able to provide more detailed guidance, as a standard application can rarely be reliably applied across various industries; the PSM may be used by the multinationals as a proxy of formula apportionment; it may be applied straight away when there is no comparable, rather than after assessing all the relevant circumstances and finds it to be the most appropriate method; as this method most likely to be applied to highly integrated enterprises, the existing comparable may not be an arm’s length transaction itself, and thus not reliable.

Therefore, the PSM is unlikely to be significantly changed to a whole new game. It is rather the only game in the town that can be played under the current situation.

4 AGENCY PERMANENT ESTABLISHMENT: REFORM AND A CLASH OF LEGAL SYSTEMS

BENJAMIN WALKER, VIENNA UNIVERSITY OF ECONOMICS AND BUSINESS

The paper analyses Agency Permanent Establishment ('PE') under paragraphs 5 & 6 of Article of the OECD Model Convention ('MC') and the recent reforms made by Action Plan 7 of the Base Erosion and Profit Shifting ('BEPS') project. The Agency PE is the most widely misunderstood PE test. The confusion is deeply rooted and difficult to displace. The author adopts the perspective of a Large Multinational Enterprises ('MNE') to discuss the shift in tax burden. The paper consists of four parts.

First, an historical investigation uncovers the root of the problem. The source of confusion derives from the gulf that exists between the two major legal systems: common law and civil law. The common law of agency is based upon freedom of contract, and the direct or apparent authority of an agent. Civil law agency is based usually on two clearly defined categories: direct representation, where the agent concludes contracts in the name of the principal; and indirect representation, where the agent concludes in their own name.

Second, an analysis of the key requirements of both paragraphs reveals the interpretative problems. The key test for a dependent agent under paragraph 5 is where the agent “concludes contracts in the name of the” enterprise, hence a civil law test irrelevant to a common law agent. Paragraph 6 subsequently displaces a dependent agent if they are independent based on a common law test. Thus, there is a gulf between the application of the test under the two legal systems. Furthermore, the other PE tests use a substance-over-form approach, rather than a legal test.
Third, an analysis of the recent reforms by the OECD to the Agency PE is provided. The changes have caused alarm to the business community. Commissioneraire structures are specifically targeted and the legal test of agency is no longer the sole test for a dependent agent under paragraph 5. Furthermore, paragraph 6 has narrowed the scope of application. The author argues that the reforms cause only a minor shift in the shifting rights for source States.

Fourth, an overview is provided outlining the impact of the reforms on the legal operating structures of MNEs. The main shift from Localised Operating Structures to Centralised Operating Structures reveals a common theme of globalisation: assets, risks and functions can be shifted very easily. MNEs operate as global companies, while sovereignty is severely restricted to jurisdiction. Under the Agency PE, MNEs can easily move contracting functions to other jurisdictions to prevent an Agency PE. While the efforts to provide further tests for Agency PE are commendable, they will not stop the march of globalisation. In fact, the changes will most likely create further disputes in the future. The author argues that schemes such as the Common Consolidated Corporate Tax Base (CCCTB) from the EU, and coordination between States is the only path forward to promote fair competition.

5 THE PROGRESSIVE GOODS AND SERVICES TAX / VALUE ADDED TAX (FISCAL POLICY) AS A TOOL OF INFLATION TARGETING?

JULIO ALTAMIRANO (JNR), RMIT

Part I addresses whether a valid analogy can be drawn between ‘Business Activity Statements’ as evident in the Australian Goods and Services Tax system (GST) and ‘GST tax returns’ (as a developing concept for individuals and families) effectively making the value added tax (VAT) systems across the approximately 145 countries throughout the World that have a VAT including that of Australia a progressive rather than a regressive taxation system with significant ‘tax and macroeconomic’ benefits to the countries that adopt such a system.

This would effectively be achieved by extending the concept of a GST tax invoice as an analogy to a GST tax return for individuals and / or families. By developing such an analogy it is hypothesized that by multiplying the GST tax invoice – with a GST rate of 10% (as evident here in Australia) – by 0%, 10%, 20%, 30%, or on the basis of any other numerical figure, logic and the Suits Index that the once thought of regressive GST would thus become progressive in nature.

The GST tax return would allow for the individual and / or the family situation and thus apply progressive rates in terms of ability to pay (premised upon assessable income or taxable income) to that tax base (expenditure) thus achieving progressivity in the indirect taxation system.

A case study approach will illustrate the progressivity of the progressive GST / VAT.

2B – TEACHING PRESENTATIONS

1 THE FIRM: RE-THINKING TUTORIALS TO PROVIDE GREATER PROFESSIONAL IDENTITY

BRETT FREUDENBERG6 AND ANNA MORTIMORE7, GRIFFITH UNIVERSITY

Professional identity and business awareness are seen as key generic skills that graduates need in their professional careers. However, a number of studies demonstrate that such skills are lacking in graduates, with current students not appreciating their importance. Creating curriculum and learning opportunities for such skill development can be challenging in an already crowded curriculum. This paper reports a simulated work integrated learning scenario – The Firm – which was integrated into tutorials. The Firm involved students being appointed to professional advisory firms, were they were treated as employees working on client case studies each week, with their boss (the tutor) mentoring them as they developed their advice. The client case studies enhanced the students’ professional identity and business awareness, as they had to extend beyond the traditional ILAC method (Issue; Law; Application and Conclusion); and formulate: (a) further facts required from the client; (b) possible solutions to assist the client; and (c) recommendations about what the client should do in the future. Through online submissions with random checks, students were encouraged to prepare prior to tutorials, with time then allocated in tutorials for the firm’s employees to finalise and refine their answers. Then one employee would present on behalf of the firm their findings and recommendations.

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Consequently, this client case study activity involved a rich learning environment with notions of active learning, teamwork, problem solving, researching, oral presentation, and overall – professional identity as business advisors. This paper will report the findings into outcomes of the firm case study, including observations about the advantages and disadvantages of the approach. It is argued that with a re-think of tutorials, it is possible to provide a learning environment that can assist to enhance the students’ professional identity, as well as their technical knowledge. It is with such enhancement, that students will be better placed to commence their careers.

2 USING AN ADAPTIVE E-LEARNING PLATFORM TO AID LAW AND BUSINESS STUDENTS’ UNDERSTANDING OF CAPITAL GAINS TAX

FIONA MARTIN AND MARGARET CONNOR, UNIVERSITY OF NEW SOUTH WALES

Australian taxation law is commonly taught as an elective subject to Australian law students. It is also a core or elective subject in accounting and commerce degrees throughout Australia. Taxation law is widely regarded as a complex and complicated area of law, involving a large amount of content that is unrelated to most student’s everyday lives, making it hard to teach and difficult for students to understand.

The 2000 Australian Law Reform Commission’s Managing Justice report was critical of the fact that Australian law degrees emphasise legal content, advocating a shift away from the ‘solitary preoccupation with the detailed content of numerous bodies of substantive law’. This report noted the increasing relevance of internationalisation, newer areas of the law such as taxation law and environmental law and the importance of legal skills. It recommended a greater emphasis on the development of high order professional and problem-solving skills. The teaching of higher order, critical thinking skills such as those that are necessary for legal problem solving and engaging with complex areas such as taxation law is, therefore, now an important component of legal education.

With the issues outlined in the above two paragraphs in mind, the authors developed two web based online learning modules designed to enhance student learning of taxation law and, in particular, taxation of capital gains. The software used was designed by Smart Sparrow and uses an approach commonly referred to as adaptive eLearning. Integrated into the online modules were the principles of legal problem solving.

This paper analyses how the principles and processes of an adaptive eLearning system can be used to assist and scaffold the teaching of capital gains tax and legal problem solving. The modules have been used as part of several taxation law courses at two major Australian universities. Students have been surveyed and student feedback on whether or not their learning and problem solving skills have improved through using the modules is discussed.

3 PEER-ASSISTED LEARNING: LESSONS FROM THE TRENCHES. PERSPECTIVES GAINED AS A FORMER STUDENT-TUTOR

DONOVAN CASTELYN, CURTIN LAW SCHOOL, CURTIN UNIVERSITY

Peer-Assisted Learning (‘PAL’) facilitates the reciprocal development of knowledge and skill between students of similar social groupings by disrupting the traditional student-teacher relationship. As an educational strategy, PAL strikes at the core of student collaboration, engagement and satisfaction. Given the ever expanding digital landscape and push towards online course delivery, PALS student-centered approach bridges gaps in course content delivery where conventional teaching practices would prove ineffective. PAL programs are equal parts flexible and adaptable to change, thus providing an attractive accompaniment to orthodox teaching methods. This paper will recollect on the authors experience as PAL participant and facilitator. The paper will draw on key perspectives gained through these experiences and compare them with the traditional learning methods undertaken during that time. This paper will advocate for the use of student tutors as an additional resources to meet the needs of the digital student and to operate alongside traditional teaching practices. Conclusively, this paper will recommend to educators, particularly those in Higher Education with a revenue focus, strategies to adopt and utilize PAL more effectively in the classroom and beyond.
4 IRAC: PUTTING TEACHING THEORY INTO PRACTICE

ANDREW COLEMAN AND DIANE KRAAL, MONASH UNIVERSITY

IRAC stands for Issue, Rule, Application, and Conclusion. It is a methodology often used in legal studies, but it is neither unique — having similarities with methodologies used in the STEM disciplines — nor is it universal. For instance, to apply the first step, students are asked, ‘What is a legal issue?’ It is more often than not a question, or a series of questions the Court asks itself in order to determine the legal liability of the respective parties, and to determine who “wins”. Identifying the legal issues is crucial and there will be more than one in each question. Once students have identified the relevant issues, the next steps flow in a logical progression. Therefore identifying the correct issue is crucial. If students identify the incorrect issues then they will then state and apply an incorrect rule.

Like many methodologies, IRAC seems formulaic, turgid in extremis, but even the most critical educators use it, albeit in a less formalised manner. It has been claimed that the IRAC approach is too restrictive for more capable students, who through skills already developed, are able to analyse case facts critically and without an overly prescriptive approach. Nonetheless, IRAC is a particularly useful tool for educating cohorts that are increasingly dominated by students whose first language is not English. Many business courses in Australia and can comprise 95 percent or more international students. Diverse cohorts of students present educators unique challenges, which arguably require the type of methodological approach that IRAC supplies. These challenges are exacerbated by large student numbers. The presenters currently use IRAC in their teaching, although we acknowledge that legal educators often appear to have a ‘love or hate’ relationship with IRAC.

Our research seeks to measure how effective IRAC is in firstly, providing a ‘lifeboat’ of sorts to educators with diverse student cohorts. It covers the literature behind IRAC and the formulation of the research framework. It consists of a longitudinal study of the application of IRAC in the teaching of tax law and business law. Discussed will be the methods adopted to gather the data, which include instructor and student interviews.

2C – ENERGY AND ENVIRONMENT

1 BASE EROSION AND PROFIT SHIFTING BY INTRA-GROUP DEBT: A CASE STUDY OF CHEVRON

ANTONY TING, UNIVERSITY OF SYDNEY

It is well known that many multinational enterprises (“MNEs”) use intra-group debts for tax avoidance purposes. The OECD admits that this tax avoidance tool is “one of the most simple of the profit-shifting techniques”. The popularity of using intra-group debts for tax avoidance purposes is further enhanced by the fact that in general they are not recognised under accounting standards and therefore do not affect consolidated financial statements of MNEs. It is not surprising that the OECD describes the BEPS risks arising from intra-group debt as the “main tax policy concerns surrounding interest deductions” (emphasis added).

There is huge literature on the issues arising from interest deduction on intra-group debts. The OECD’s work on the subject in the Base Erosion Profit Shifting (“BEPS”) Project – in particular, Action 4 which focuses on “limiting base erosion involving interest deductions and other financial payments” – represents a recent major contribution to the literature, providing important insights into the issues and design features of different forms of interest limitation regimes.

At the other side of the world, a recent major tax case and the Senate enquiry into corporate tax avoidance in Australia revealed detailed information about how Chevron has been using intra-group debts in its tax structures, which is very difficult, if not impossible, to discern from its financial statements. It provides a timely case study of how intra-group debts are used in practice, setting the stage for an evaluation of Action 4’s best practice approach.

The aim of this article is twofold. First, it analyses two tax structures of Chevron in Australia as a case study to highlight the key issues arising from intra-group debts. The first structure, which was in place from 2004 to 2009, was the subject of a recent major tax case in Australia. The second tax structure has been in place from 2010 and was revealed in the Senate enquiry into corporate tax avoidance. Second, this article reviews the OECD’s best practice approach recommended in the Final Report for Action 4, and using Chevron as a case study, evaluates whether the recommendations are effective for addressing BEPS arising from intra-group debt.
2 TAX INCENTIVES FOR PETROLEUM AND MINING ACTIVITIES
DIANE KRAAL, MONASH UNIVERSITY

Tax incentives are preferential tax treatments provided to selected groups of taxpayers. A traditional justification for using tax incentives is to mitigate market failure associated with the exogenous pressures. Tax incentives are often a result of policymakers’ ad hoc judgment on their jurisdiction’s needs. These policy makers perceive selected groups of taxpayers as so crucial to national or regional economic growth that they deserve an exclusive tax break.

Tax incentives can take the form of reduced CIT rates, investment-linked credits and accelerated depreciation; allowances for expenditures on research and development, exploration cost deductions; and reduced rates for withholding and sales taxes. Incentives extend to tax holidays (or tax exemptions), rate reductions for import/export and employee taxes; tax concessions in privilege zones and project-specific tax relief. It is said that a fiscal system should provide adequate compensation to the host government and the norm is to consider tax incentives to encourage foreign direct investment. However the much of the literature, which includes recent research sponsored by the World Bank, concludes that tax concessions for the extractive sector are not necessary because their activities are location-based and the government should collect the rents from those resources. Ironically such tax incentives and concessions reward companies for extraction investment decisions they would have made anyway and have the negative effect of tax base erosion.

The question of whether or not tax incentives given to the petroleum and mining sectors are economically beneficial for a country’s economy is divisive and contested.

In order to evaluate the outcomes of tax incentives, a qualitative research approach is used to determine the appropriateness and economic benefits from existing tax incentives for extractive industry activities in selected jurisdictions. The framework uses a triangulation of methods comprising case studies of tax incentive regimes in four countries; evaluations of the level of industry exploration and development expenditure in each country; and consideration of ‘intent’ in tax incentive legislative provisions. The framework is cognisant of the differing approach by a World Bank-sponsored study in 2013 on tax and non-tax incentives and investments, and uses it for validation.

Of the three selected methods, this paper just considers the case study results of the Asia-Pacific countries of Australia, Malaysia, Indonesia and Papua New Guinea. They have been selected as comparators as they are extractive industry competitors in terms exporters to customers in Asia, such as Japan, Korea and China. Findings to date indicate an ongoing tax incentives debate in Australia; the government’s imperative to encourage extraction from marginal petroleum fields in Malaysia; a resource nationalisation push in Indonesia; and an appetite for a fiscal adjustment program that targets the removal of tax exemptions in Papua New Guinea.

3 CANADA’S ENVIRONMENTAL TAX REFORM – WHO GAINS? WHO LOSES?
DEBORAH L. JARVIE, UNIVERSITY OF LETHBRIDGE

Canada is undergoing an as-of-yet unnamed, yet evident, environmental tax reform. This paper examines the carbon tax in British Columbia and Alberta, the cap-and-trade programs in Ontario and Quebec, and a myriad of incentives and fee structures currently in place for environmental protection.

Keeping in line with the theme of the conference, the ‘winners’ and ‘losers’ from Canada’s environmental tax reform initiatives are presented and discussed. The paper addresses both sides of the argument surrounding the implementation of the carbon tax, seen on one hand as necessary due to the growth in greenhouse gas emissions, yet viewed on the other hand as unfair due its regressive nature and its competitive impacts on industry. Similarly, cap-and-trade programs are both criticized for being inefficient pricing mechanisms, yet praised as being the superior method to decrease pollution levels.

Based on the foundations of Arthur Cecil Pigou's environmental tax theories, the paper examines the tax base and design of the various taxes and programs, in addition to the political influences, and social and economic effects. The paper looks at the issues from the viewpoint of the three pillars of sustainability, discussing 1) the economic impacts from environmental tax reform on industry – particularly energy production and agriculture, 2) the environmental effects from the various policies and programs, and 3) a host of social concerns, praises, and outcomes.

Lastly, the paper addresses ways in which the issues from reforms such as this (and others) may be effectively taught to students through experiential exercises, allowing for a deeper understanding and appreciation of policy shifts. Students are thus taught to objectively identify ‘winners’ and ‘losers’ in tax reform (and specifically environmental tax reform in this case), while learning to think critically about the formulation of tax policies.
4 TAX AND THE ELECTRIC CAR: AN AUSTRALIAN CASE STUDY
ALEXANDER (LEX) FULLARTON, CURTIN UNIVERSITY

This paper considers the impacts to taxation revenue of the changing technology of motor vehicles.

As motor vehicles transform their drive trains internal combustion engines to electric motors so too should their energy source change from fossil fuel to renewable energy. However, that is not necessarily the case.

Vehicle power may simply shift from the on-board, fossil fuelled, reciprocating engine to a centralised fossil fuelled power station. In that case, fossil fuel consumption, and accompanying greenhouse gas emissions, will continue unabated, or possibly worsen due to inefficiencies in electricity generation, transmission, storage and use in the vehicle.

Regardless of whether the electricity to power the vehicle is sourced from renewable energy or from fossil fuelled power stations, revenue from motor vehicle fuel taxes, which are now primarily levied on petroleum products powering motor vehicles, will ultimately fall. Therefore in order to continue to build and maintain motor vehicle transport infrastructure governments must change their focus as to how vehicle tax revenue is raised.

This paper looks at the current volume of electric vehicles on Australia roads and what is likely to happen in the future. It also looks at the impact of rising self-generated electricity from renewable energy sources and how that energy might be used to power electric vehicle in the future. It seeks to establish how that energy transition might impact the current taxation revenue from motor vehicle fuel taxes.

It finds that unless motor vehicles are charged from independent electricity sources, such as dispersed, embedded solar pv installations, little is saved in the way of greenhouse gas emissions. However tax revenues from motor vehicle fuel sales decline considerably. Although, generally, overall tax revenue may remain consistent, as fuel taxes may be substituted by taxes on the sale of electricity.

The research supporting this paper is a case study of a plug-in hybrid electric vehicle (PHEV) owned by the Solex solar farm project in Carnarvon Western Australia. It investigates previously published literature on the adoption of electric vehicles, and the impact of falling taxation revenue from declining diesel, petrol and liquid petroleum gas (LPG) sales.

Thursday 18 January 2018 from 11.30am – 1.00pm
(Parallel Sessions)

3A – CGT/COMPANY TAX REFORM

1 AUSTRALIA’S 50% CGT DISCOUNT: POLICY OVERSIGHT?
JOHN MINAS AND BRETT FREUDENBERG, GRIFFITH UNIVERSITY

Since its enactment in 1999, the 50% capital gains tax (CGT) discount for personal taxpayers in Australia has, arguably, become an entrenched feature of the Australian tax system. We argue that the CGT discount remains in place in spite of its tax policy shortcomings. These shortcomings include that the CGT discount is inequitable from the perspective of horizontal and vertical equity, and it is inefficient in that it may encourage an overinvestment in assets that produce most of their return in the form of capital gains. Preferences such as the CGT discount can also lead to a loss of tax revenue as a result of, what is effectively, a lower tax rate.

Australia’s original CGT regime was enacted to commence in September 1985 on the recommendations of the 1975 Asprey Review, which set out a very strong equity case in favour of taxing capital gains. These equity arguments appear to have influenced policymakers, as capital gains were subject to assessment at full marginal tax rates from the time that that the original CGT was enacted.

The equity considerations that had informed the introduction of the Australia’s original CGT, did not appear to influence policymakers who oversaw the enactment of the CGT discount in 1999. Furthermore, there appears to have been an absence of a convincing tax policy justification for the departure from taxing capital gains at the same rate as other forms of income, and the consequent compromises to equity and efficiency.
In recent years the CGT discount has come under increased scrutiny. More specifically, some of the commentary has noted that the discount is too generous and criticised its potential to distort investment decisions. The apparent increase in attention and commentary on the CGT discount has originated from business and professional organisations as well as academics. This paper is a critique of the CGT discount which draws on a chronologically organised analysis of the views and commentary on the CGT discount from individuals and organisations outside of government. Views and commentary on the CGT discount are sourced from various media, submissions to government discussion papers and other publically available information. Through this analysis it is argued that the CGT discount requires reform and that such reform would improve vertical and horizontal equity and efficiency.

2 THE PARTIAL GST MAIN RESIDENCE EXEMPTION: LET ME COUNT THE WAYS… IT “PARTIALLY” CONTRIBUTES TO THE BUDGET DEFICIT

KIRK WILSON, THOMSON REUTERS

The paper will examine the many and various technical ways that a partial CGT main residence can arise – and many of the nuances and less known rules associated with their operation. These will include the partial exemption under:

- the income producing rule (s 118–190 of the ITAA 1997) – with a particular emphasis on the often overlooked aspects of the “first use to produce income rule” in s 118–192;
- the absence concessions where a dwelling is used for more than 6 years to produce income (and its interaction with the rule in s 118–192 in that case);
- the rule for a dwelling failing to qualify as a main residence throughout the entire period of its ownership (s 118–185);
- the building concessions under s 118–150 with its “extensive” requirements (and how it can be potentially “exploited” in a range of situations);
- the concession for a reasonable period to move into a home after acquiring it – and it “two-edged sword” nature (s 118–135);
- the “overlap” concession for changing main residences in s 118–140 (and how you determine which home does not get the concession when the rule is breached); and
- the “messy” and intricate rules that apply to an inherited dwelling where the right to a full exemption is lost.

However, as a starting point before examining these technical rules, the paper will raise the fact that the Treasury 2016–17 MYEFO statement issued in December 2016 estimated that the loss to revenue from this particular “tax expenditure” would be $35bn – being the most costly tax expenditure (even outstripping the “main residence exemption” itself and previously, “superannuation concessions”!!)

The paper will also attempt to explain why this has come about. It will also suggest that this figure could be higher given the likelihood that many people may not be aware when a partial exemption arises (or may failure to report it) – but that this may change with the ATO’s intention to focus on CGT and real property transactions via an extensive data matching program with the Land Titles Office.

This then in turn will lead onto the discussion of the above partial exemptions rules and their technical operation.

Finally, the paper will conclude by making some suggestions as to how the partial exemption rules could be “tidied up” both from a technical point of view – and in the interest of the apparent significant tax expenditure leakage. This will also include some general comments about how the CGT main residence exemption could perhaps be “creatively” reformed for both compliance and revenue reasons.
3 TAX REFORM’S SHIFTING WINNERS AND LOSERS: EXPLORING THE IMPACT OF REDUCING CORPORATE TAX RATES ON THE HOME JURISDICTION
ANN KAYIS-KUMAR, UNIVERSITY OF NEW SOUTH WALES

For the past 3 decades, international tax competition has put pressure on governments to reduce their headline corporate income tax rates on the basis that this will ensure their jurisdiction remains attractive to foreign investment. However, this is often at the expense of the tax revenue base which, in turn, risks increasingly shifting the budgetary burden away from mobile firms to immobile individuals.

With the Treasury Laws Amendment (Enterprise Tax Plan No. 2) Bill 2017 signaling a renewed push to further reduce Australia’s headline corporate income tax rate to an eventual 25% by 2026–27, the responsiveness of multinational entities (MNEs) to changes in tax rates and cross-border anti-avoidance rules is an important parameter for policymakers and governments to understand as they consider future actions.

In doing so, this paper explores the responsiveness of MNEs to changes in tax rates and cross-border anti-avoidance rules through a novel practical optimisation modelling analysis. Specifically, the model presented in this paper explores the impact of changing tax rates, interest limitation rules, CFC rules and transfer pricing rules on a hypothetical tax-minimising MNE’s tax planning decisions.

The results are particularly important considering the international ‘race to the bottom’ in tax rates. It is hoped that this paper provides a useful reference point for policymakers’ future considerations in designing tax rules that encourage the sharing of the budgetary burden.

3B – COMPLIANCE

1 IMPROVING VOLUNTARY COMPLIANCE OF SMALL BUSINESS OWNERS IN INDONESIA THROUGH TAXPAYER EDUCATION
KHUSNAINI, POLYTECHNIC OF STATE FINANCE STAN, FINANCE EDUCATION AND TRAINING AGENCY

Small businesses in Indonesia have been recognised as the main contributor to the Indonesian Gross Domestic Product (GDP). Reports published by several government agencies suggest that in 2014, small businesses contributed approximately 60% of the Indonesian GDP, which is an increase of 4% from the 2009’s figure of 56%. Despite this significant contribution, unfortunately, their contribution to tax revenue is relatively small of only 1% of total tax revenue. The Indonesian tax office has been known to introduce several attempts to improve their contribution towards tax revenue. These, unfortunately, are not able to improve their compliance significantly.

This research is aimed at exploring new ways to address this concern. For this purpose, this research uses action research as an approach. Action research is chosen because it enables a need of change to be identified, potential model or solution be proposed and then tested, and lastly, the application of the proposed solution be evaluated.

In this research, the business development service is chosen as the main model. This model relies on the assumption that a person will be willing to do a certain thing provided that they obtain a particular benefit directly. The problem of providing direct link between taxation and benefit in this research is addressed by assuming that the tax office is an education provider working in concert with other agencies, such as tax office (Directorate General of Tax), universities, small business community, and other relevant government agencies. These entities work together to organise workshops in business operation, book-keeping, or basic taxation concepts, and organise market stalls to 200 small business owners in Southern Tangerang Region that participate in this research. Hence, this research views taxpayer education in a wider context as opposed to a limited view of providing only tax materials. The education provider and the research participants then establish an entity referred to as UMKM Sahabat Pajak (USP).

In the evaluation phase, it is revealed that there is a significant increase of participants who pay taxes. In the start of the program, there is only 4% of participants who pay taxes. Once the program is concluded, this figure rises significantly to 92%. It is also revealed that a number of participants acknowledge that there is an increase in their business turnover as a result of participating in the activities organised as part of this research. Further, they are willing ask their colleagues to be part of USP, which continues to exists after the research is concluded.

In conclusion, it is revealed that it is possible to improve small business voluntary compliance by showing that there is an indication of a direct benefit obtained from taxation, as shown in the use of the business development service in this research.
2 THE CORRELATIONS BETWEEN CORRUPTION, TAX COMPLIANCE AND TAX LOSS
DAN CHENG AND QING ZENG, JINAN UNIVERSITY

The new administration has adopted a “zero tolerance” attitude toward corruption and carried out new measures to punish corruption, which was well accepted and welcome by the public. Will anti-corruption ramp improvement taxpayers’ tax compliance and then reduce tax losses? Based on this hypothesis, we analyse the issue by the multiple regression method using the time series data from 2000 to 2014 in China. The empirical results show that there is a significant negative correlation between corruption and tax compliance. The less the corruption, the higher the tax Compliance of taxpayers. It means that anti-corruption system construction should continue to strengthen and perfect, it will benefit to increase the revenue as well as reduce the tax loss.

3 THE CHALLENGES OF IMPLEMENTING VALUE-ADDED TAX ON ECOMMERCE TRANSACTIONS IN INDONESIA
ASTRID AMALIA SUINTORO AND CHRISTINE TJEN, UNIVERSITY OF INDONESIA

E-commerce transactions show significant improvements from year to year. This raises the opportunity to impose Value-Added Tax (VAT) on the transactions. However, various challenges arise because the existing policy has not been able to accommodate the uniqueness of e-commerce transactions. This research discusses the challenges in implementing VAT on e-commerce transactions in Indonesia. Based on the research, the challenges faced by tax officers in implementing VAT on e-commerce transactions in Indonesia are identifying taxpayers engaged in e-commerce, determining taxpayers’ jurisdiction, incompleteness of records, identifying electronic and physical products, lack of audit trails, and lack of system controls. It is expected that the Directorate General of Tax can make specific rules related to e-commerce especially in creating the system and procedures for the imposition of VAT on e-commerce transactions.

3C – COMPLIANCE/ADMIN
1 THE SPINNING WHEEL – INLAND REVENUE’S NEW COMPLIANCE MODEL: WHY THE CHANGE AND DOES IT REALLY MATTER?
ALISTAIR HODSON, CANTERBURY UNIVERSITY

The Wind and the Sun were contemplating who was the greatest. One day they saw a man walking along a road and decided to settle their dispute by way of a challenge. ‘Whoever can remove the man’s coat will be the strongest’ they decided. The Wind blew and blew, only to cause the man to hold on more tightly to his coat. The Wind eventually gave up in despair. The Sun then radiantly shone upon the man, who in a short while voluntarily removed his coat.9

There has been a myriad of studies examining tax compliance over the last few decades with the question still relatively left open as to why people comply through paying their taxes. Plato is noted as saying ‘when there is an income tax, the just man will pay more and the unjust less on the same amount of income.’10 New Zealand Inland Revenue adopted the Braithwaite Compliance Model in 2001.11 The Braithwaite Compliance Model was introduced by way of roadshows to the New Zealand tax community and Inland Revenue staff, as well as featuring prominently in Inland Revenue literature, such as in their Annual Report. The Braithwaite Compliance Model was regarded as ‘quite transformational’ at the time it was introduced and is still held in very high regard.

Inland Revenue developed and adopted a new ‘circular’ compliance model, with several ‘wheels’ that are able to spin in either direction. The new model builds upon the Braithwaite Compliance Model and when released in late 2015, came in without fanfare. The lack of fanfare was a deliberate decision on behalf of Inland Revenue. This paper examines why the Braithwaite Compliance Model was replaced and whether the ‘spinning wheels’ of the new compliance model give tax compliance more positive ‘traction’ in New Zealand.

8. Alistair Hodson, Lecturer, University of Canterbury, New Zealand.
This paper will also explain how the new Inland Revenue Compliance Model works, what led to the decision to change to the circular model approach, and how well compliance models are understood generally by Inland Revenue staff. Many Inland Revenue staff could readily identify with the ‘pyramid’ part of the Braithwaite Compliance Model. Thus how are compliance models being ‘put into practice’ by Inland Revenue staff? This paper stems from interviewing specific staff from Inland Revenue in Wellington who were tasked with the mandate to ‘refresh our [Inland Revenue’s] compliance approach.’

The paper concludes that the new Inland Revenue Compliance Model is a ‘customer centric’ approach for an ever changing Inland Revenue. It is a compliance ‘thinking tool’ that also recognises the importance of influencing a person’s norms with the ultimate aim of influencing the ‘just’ and the ‘unjust’ Inland Revenue ‘customer’ in a positive way.

2 EIGHT YEARS OF THE CODE
IAN TAYLOR, TAX PRACTITIONERS BOARD

Almost 8 years since the commencement of the Tax Agent Services Act 2009 (TASA), Ian Taylor, Chair of the Tax Practitioners Board, reviews how the TASA and the Code of Professional Conduct has maintained the ethical and professional standards of the tax profession.

Ian will discuss how tax practitioners have responded to the challenge of rapidly evolving business practices while meeting their Code obligations, and share insights from a review of more than 11,000 compliance cases over the past 8 years and outcomes from Administrative Appeals Tribunal and Federal Court cases.

3 WHO DOESN’T PAY THE PIPER? DEBT, TAX FINE AND PENALTY COLLECTION IN NEW ZEALAND
LISA MARRIOTT, VICTORIA UNIVERSITY OF WELLINGTON

This article examines the different approaches to collecting debts in New Zealand. Using data from annual reports and data gathered under Official Information Act requests, it compares the debt collection approaches across a number of different government agencies, including the Inland Revenue, the Ministry of Justice, the Ministry for Primary Industries and the Ministry for Social Development.

The study outlines debt collection tools, such as the use of deduction notices and instalment arrangements to assist collection. However, the primary focus of the study is on debts, penalties and interest written off.

Approaches to collecting funds owed to the Crown are inconsistent across government agencies, both in their intent and in their application. The current approaches result in large sums of funds remaining uncollected. There is some suggestion from overseas literature that white-collar fines and penalties lack strong enforcement. The aim of this study is to examine whether there is any relationship between the types of monies owed and debt collection approaches.

3D – INTERNATIONAL

1 ENHANCED TAX REPORTING REQUIREMENTS UNDER THE BEPS PROJECT: PREPARING THE PROFESSION AND THEIR CLIENTS
ADRIAN SAWYER AND KERRIE SADIQ13, CANTERBURY UNIVERSITY AND QUEENSLAND UNIVERSITY OF TECHNOLOGY

This paper reports on aspects of a project which systematically analyses the informational requirements of the standardised tax reporting approach for country-by-country reporting (CbCR) under Action 13 of the OECD’s Base Erosion and Profit Shifting (BEPS) project. Specifically, Action 13 provides for enhanced tax reporting through a three tiered standardised approach for multinational entities requiring a master file (MF), a local file (LF), and a County by County (CbC) report. Unless otherwise mandated, such reports will be confidential between relevant revenue authorities and not available to the general public. Increased transparency requirements will have a significant impact on the accounting and legal professions and their clients.

13. Dr Adrian Sawyer is Professor of Taxation, UC Business School, University of Canterbury, Christchurch, New Zealand, email: adrian.sawyer@canterbury.ac.nz (contact author). Dr Kerrie Sadiq is Professor of Taxation, QUT Business School, QUT, Brisbane Australia, email: kerrie.sadiq@qut.edu.au. The authors wish to express their gratitude for their research assistant, Melinda Jone, for her excellent work. Without her involvement completion of this project would have been a significant challenge. We also wish to acknowledge the financial support of Chartered Accountants Australia and New Zealand for their grant that has made this project possible. An earlier version of this paper is to be presented at the Tax Research Network Conference in September 2017. This abstract sets the scene as at 31 July 2017, including interviews held as at that date. The full paper in due course will incorporate the findings from all of the interviews.
ABSTRACTS

To date, these implications have not been examined in depth in relation to their practical impact and significance on advice provided to clients, and overall professional and client readiness for the changes. Consequently, the research question addressed in this paper is:

What are the current ‘gaps’ and how best to prepare the Australian and New Zealand Profession for Enhanced Tax Reporting Requirements under the BEPS Project?

This research involves conducting interviews with tax professionals in Australia and New Zealand, along with representatives of the Australian Tax Office and Inland Revenue. It is intended to contribute directly to both the implementation of the CbCR measures, along with the ‘education gap’ that the researchers believe needs to be closed between current readiness and awareness of the requirements of this key BEPS initiative. Furthermore, it will allow professionals to advise clients of training, personnel and infrastructure needs as well as outlining the benefits that enhanced tax reporting may achieve.

2 COUNTRY BY COUNTRY REPORTING: A NEW DIMENSION IN TAXPAYER COMPLIANCE OBLIGATIONS
LIVIA GONZAGA, LES NETHERCOTT AND ESIN OZDIL, LATROBE UNIVERSITY

This paper critically analyses the Country by Country reporting requirements according to the Australian legislation and examines the impact of its compliance requirements for large multinational consolidated groups operating in Australia. The paper describes the taxation framework on Country by Country reporting in Australia and identifies issues that transcend the taxation sphere, most of them related to general business reporting and corporate governance. As such the paper seeks to demonstrate that complying with Country by Country reporting may be more burdensome and have a much wider impact than initially anticipated, going well beyond the taxation aspects and affecting corporate entities as a whole.

3 INVESTING WITH ONE HAND TIED BEHIND YOUR BACK: AN AUSTRALIAN PERSPECTIVE ON U.S. TAX RULES FOR NON-RESIDENT CITIZENS
KAREN ALPERT15, UNIVERSITY OF QUEENSLAND

The United States is unique in taxing non-resident citizens under the same rules as residents. For Australian citizens and residents who are also U.S. taxpayers, the impact of this is much greater than the generally minimal amount of U.S. tax due each year. Planning one’s tax affairs under two very different tax systems is complex and often results in sub-optimal outcomes. Australian citizens and permanent residents who are required to file U.S. tax returns will find it more difficult to effectively save for retirement than their peers, and will be more likely to rely on the Australian government’s social safety net in their later years. Under U.S. law, citizens and legal permanent residents (green-card holders) must pay U.S. tax on their world-wide income regardless of where they live. The U.S. grants citizenship broadly to everyone born on U.S. soil as well as to overseas-born children of U.S. citizens if the parents have previously lived in the U.S. for a sufficient period of time. In addition, there are Australian citizens who have previously naturalised in the U.S. and returned to Australia. An estimated 200,000 Australian residents hold U.S. citizenship; many are dual citizens. Renouncing U.S. citizenship is not easy. The U.S. charges the highest renunciation fee in the world and has an exit tax that, for affected individuals, would mean immediate taxation by the U.S. of any superannuation balance not previously included in U.S. tax, as well as U.S. capital gains tax on assets earned and accumulated in Australia.

The U.S. tax code significantly discriminates against many non-U.S. investments and business structures, which significantly constrains the options of affected Australian-resident taxpayers. The treatment of Australian superannuation on a U.S. tax return is the subject of some disagreement among tax professionals. While some argue that superannuation is equivalent to social security, and therefore exempt from U.S. tax under the Australia / U.S. tax treaty, others treat contributions as taxable currently on the U.S. return. For SMSFs and for some highly compensated individuals, many tax professionals treat the gains inside superannuation as taxable currently in the U.S. as well. Investment opportunities outside superannuation are also limited for U.S. taxpayers. Australian managed funds are punitively taxed under the Passive Foreign Investment Company (PFIC) rules. Direct investment in Australian listed shares is generally not problematic for U.S. taxpayers as long as the company is running an active business – this rules out Real Estate Investment Trusts and Listed Investment Companies, both of which would fall under the PFIC rules.

15. UQ Business School, University of Queensland. email: k.alpert@business.uq.edu.au.
For entrepreneurs and small business owners, the U.S. tax treatment of “foreign” corporations owned or controlled by a U.S. person can unravel any Australian tax advantages. Family trust structures often recommended for asset protection and tax planning purposes in Australia would likely be treated as a “Foreign Grantor-Trust” on a U.S. tax return. Finally, U.S. law may make it difficult for non-resident U.S. citizens to open financial accounts in the U.S. to avoid the punitive U.S. tax treatment of Australian investments.

Thursday 18 January 2018 from 2.00pm – 3.30pm
(Parallel Sessions)

4A – TAX ISSUES

1 WOMEN WITH TOP INCOMES: WINNERS IN THE TAX SYSTEM?
MIRANDA STEWART, SARAH VOITCHOVSKY AND ROGER WILKINS, AUSTRALIAN NATIONAL UNIVERSITY, GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES AND UNIVERSITY OF MELBOURNE

We study women with top incomes in Australia, using tax records data. This research can be done because of individual tax returns in Australia. Building on an earlier paper that establishes basic trends and characteristics of women with top incomes, we seek in this paper to explore and deepen our analysis of women with top incomes in Australia, compared to other countries. We also seek to understand what the patterns of women with top incomes can tell us about the current Australian income tax system as it applies to top incomes. We present research on the share of women in the top 10%, 5%, 1% and 0.1% of the income distribution and compare the position of women in Australia to comparable countries. Overall, Australia has a similar pattern to comparable countries, however Australia also deviates from other countries in some respects. Where possible, we explore reasons for the difference including income splitting and the use of entities such as superannuation funds, trusts and private companies to generate income and hold assets that is facilitated by rules in Australia’s income tax.

2 AN EXAMINATION OF THE LEGITIMACY OF THE AGGREGATE VIEW OF THE CORPORATION
BRONWYN MCCREDIE16 AND KERRIE SADIQ17, QUEENSLAND UNIVERSITY OF TECHNOLOGY

In US and European jurisdictions, under a classical corporate tax system, both a company and its shareholders are taxed separately on the profits earned and distributed by the company. In Australia however, an imputation tax system applies to prevent double taxation. That is, companies are taxed at the corporate tax rate and when dividends are distributed, company tax paid is refunded to shareholders via a franking offset. This franking offset allows shareholders to reduce their income tax, which would be due and payable on dividend income, ensuring ultimately that the profits of the company are taxed at the shareholders marginal tax rate. Consequently, since the introduction of the imputation regime in Australia in 1987, company tax acts as a proxy for taxing shareholders. Although, this is a premise arguably established in 1982 with the introduction of the ‘Recoupment Tax’18 which imposed a tax liability on shareholders for lost company tax under ‘bottom of the harbour’ schemes.

Australia’s dividend imputation system suggests that shareholders are ultimately responsible for many of the actions of the corporate, with companies adhering to the ‘aggregate’ view of a corporation where the company is simply the sum of its shareholders (Avi-Yonah, 2014; Gindis, 2009). Under this theory, tax aggressive behaviour is not only acceptable but expected as the company’s main purpose is to maximise profits and value for shareholders. This study however argues that tax aggressive behaviour does not necessarily translate into a higher return for shareholders as the payment of tax is a company’s social responsibility (Zummo et al., 2017; McCredie and Sadiq, 2017). Consequently, to aggressively minimise tax in order to increase profitability in the short term would be detrimental to a company’s reputation (Marriage, 2014; Lavermicocca and Buchan, 2016). This argument is further supported by extant literature which demonstrates that news on tax aggressive behaviour has a negative impact on a company’s stock price (Hanlon and Slemrod, 2009)19. To date however, the legitimacy of the ‘aggregate’ view of the corporation has not been extensively examined (Avi-Yonah, 2014).

16. Presenting Author: bronwyn.mccredie@qut.edu.au
17. Corresponding Author: kerrie.sadiq@qut.edu.au
18. The ‘Recoupment Tax’ introduced in 1982 via the Taxation (Unpaid Company Tax) Assessment Act established that shareholders of corporates that engage in and benefit from tax avoidance schemes will be liable for the company tax that should duly be paid.
19. Hanlon and Slemrod (2009) examine stock price reaction to news on corporate involvement in tax shelters. They find, in aggregate, that the corporates stock price declines on discovery.
This study capitalises on Australia’s unique position and tests whether tax aggressive behaviour impacts returns to shareholders (both capital growth and dividends) as expected under the aggregate view of the corporation. It provides evidence of the impact of extant company tax practices on shareholders and aids in the development of domestic tax reform measures designed to ameliorate tax minimisation and aggression.

3 CORPORATE TAX AVOIDANCE OR RESPONSIBILITY
JILNAUGHT WONG AND NORMAN WONG, THE UNIVERSITY OF AUCKLAND

This study provides an empirical analysis to see whether New Zealand companies listed on the NZX 50 between 2015 and 2017 are responsible corporate tax payers or whether they engage in corporate tax avoidance. Our results indicate, after removing companies from the property and retirement and aged care sectors in the analysis, that the remaining companies listed on the NZX 50 have effective tax rates that are close to and similar to the corporate statutory tax rate. For companies in the property and retirement and aged care sectors, we find that these firms have effective tax rates that are much lower than the corporate statutory tax rate, which might initially indicate the prevalence of tax avoidance. However, closer inspection of their financial statements indicates that they are not doing anything that is inconsistent with the statutory tax regime. Their lower effective tax rates are due to differences in the accounting for investment properties, which are a major asset on these companies’ balance sheets. Increases in the fair value of these investment properties are part of pre-tax accounting income, but they are not taxed as they are treated as a capital profit on revaluation and on realisation. For the property and retirement and aged care industries, inclusion of increases in the fair value of properties in pre-tax accounting income could be interpreted as a gain arising from an act done in carrying on a business, and there may be grounds to argue that these capital gains ought to be taxed, especially on realisation, just as other business income is taxed. Overall, our study shows that the sample of NZX 50 companies are responsible corporate tax payers, there is no evidence that they are engaged in tax avoidance, and any deviation from the statutory tax rate is because of the exempt nature of the increases in the fair value of investment properties. In turn, this begs the question of whether the property and retired and aged care industries should be advantaged when other industries are not.

4B – TAX HISTORY
1 THE ROLE OF THE LEAGUE OF NATIONS IN THE DEVELOPMENT OF DOUBLE TAX AGREEMENTS
SUNITA JOGARAJAN, UNIVERSITY OF MELBOURNE

There are currently more than 3,000 bilateral tax treaties addressing the avoidance of double taxation (commonly referred to as ‘double tax agreements’). These treaties have their foundations in the work of the League of the Nations in the 1920s which ultimately resulted in the publication of ‘model’ treaties in 1928.

Using original archival research, this paper explores how the problem of double taxation came to be considered by the League of Nations and the approach adopted by the League to address it. The paper then examines in detail some of the discussion that took place in the 1920s by the government and technical experts seeking to find a solution to the problem before them.

The preliminary conclusion of the paper is that, despite the best efforts of those involved who were participating as technical experts and not country representatives, the League’s model treaties were largely the result of political factors and influences rather than theoretical best practices to avoid double taxation. There was also a strong element of path dependence as the League’s Experts generally favoured solutions which conformed to existing domestic or tax treaty practice, even though they may have been sub-optimal from a purely theoretical perspective. In essence, the tax practices of a small group (seven) of countries gave rise to measures to address double taxation which continue to be used globally.

These findings are particularly relevant today as countries seek to amend the model tax treaties to address the problem of ‘base erosion and profit shifting’. The historical account supports bolder reforms and a shift away from practices developed almost a century ago.
2  CESS TAXES IN INDIA: A RIGHTS BASED ANALYSIS OF EARMARKING
ASHRITA PRASAD KOTHA, JINDAL GLOBAL LAW SCHOOL

For the financial year 2016–2017, approximately 9.24 % of the total revenues of the Union government of India comes from levies known as cesses. Article 270 of the Constitution refers to a cess as a levy with a ‘specific purpose’. The Supreme Court has described a cess as a levy for a specific administrative expense which may bear the features of either a tax or a fee.

The Indian Constitution states that proceeds from cess taxes levied by the Union government need not be shared with State governments. This answers our curiosity of why cess taxes came to be so popular. However, historical analysis bears out that, in practice, majority of the proceeds are not transferred towards the earmarked purpose. Also, government audit reports have noted that cess proceeds have been diverted for other purposes. Even with the advent of the tax reform through the introduction of the Goods and Services Tax in the country, a new cess has been introduced.

Despite cess taxes having been in vogue for several decades now, certain fundamental questions remain unanswered.

Firstly, what is the concept of earmarking? Does the concept of earmarking entail different degrees of correlation between collection and expenditure?

Secondly, how then do we understand Indian cess taxes in terms of obligations on the government and rights of the cess payers?

We would need to begin the enquiry by examining the significance and true import of the phrase ‘specific purpose’ used in relation to a cess tax. It would appear that the text of the Constitution needs to be given appropriate meaning as otherwise it would be rendered nugatory. Hence, does the phrase ‘specific purpose’ imply an inherent check by imposing an obligation on the government to demonstrate utilization? If not, how can one maintain the distinction between the different levies such as taxes, fees and cesses contemplated under the Constitution?

Also, to what extent does the government have to utilize cess proceeds? Currently, the threshold for utilization has been set by the charging statues. While some legislations state that the proceeds minus the cost of collection would be disbursed, others give the Union government wider discretion including the right to determine whether proceeds are to be transferred and if so, the amounts to be transferred. It appears that the latter legislations confer a very wide discretion on the government but does that also make it contrary to the spirit of a cess tax?

The study would have to be informed by looking at the judicial response to any instances of non-utilization or diversion of cess proceeds brought before Indian Courts.

The study is imperative as it would be the first step to building a rights based narrative for cess taxes and help in nudging governments to act in a transparent and accountable manner.

3  KEEP YOUR UNDERPANTS ON (IF YOU CAN): THE PROHIBITIVE EFFECT OF TARIFFS ON WORKINGMEN’S UNDERWEAR IN AUSTRALIA, 1921–1926
CAROLINE DICK, UNIVERSITY OF WOLLONGONG

This paper deals with the prohibitive protectionist tariff measures associated with the importation of workingmen’s underwear into Australia in the 1920s. These severe measures had the effect of restricting the clothing choices of male working class consumers. The paper argues that whilst these measures were prompted by pure ‘unashamedly’ rational economic motives they also had the pernicious effect that the working man was afforded no opportunity to voice his concerns about an impost that had such a drastic impact on his consumer choices.

This paper begins with an examination of the prohibitive effect of those tariff duties imposed on men’s underwear during the period from 1921 until 1926. During this period, local underwear manufacturers persistently demanded that government increase tariffs on imported men’s underwear. Some even demanded that the male consumers be forced to relinquish their right to wear what they chose and be compelled by government to support local industries by wearing only Australian-made underwear. The paper then describes the role the Tariff Board played, as the ‘institutional voice of protectionism’, in restricting the choices of working class consumers. This paper also examines the xenophobic anxieties that prompted Australian manufacturers to demand that Australian workers be forced to eschew the more practical and inexpensive imported cotton underwear in favour of the more costly Australian-made woollen underwear.
1 CROWD-SOURCED FUNDING – HAVE THE TAXATION CONSIDERATIONS BEEN CONSIDERED THROUGH?

STEPHEN GRAW, JAMES COOK UNIVERSITY

The Corporations Amendment (Crowd-sourced Funding) Act 2017 (Cth) was passed on 28th March 2017 and its equity funding framework will take effect on 29th September 2017. Its aim, as described by the Treasurer in his Second Reading Speech, is ‘to help transition the Australian economy from the mining investment boom to a more diversified economy, with broader based growth, and long-term strength and resilience … by opening up new and innovative sources of capital funding for Australian small businesses and start-ups’. The Act is intended to achieve that aim by implementing yet another of a range of measures that were originally announced in the National Innovation and Science Agenda that the Government released on 7 December 2015 and which were included in the Mid-Year Economic and Fiscal Outlook 2015–16 released on 15 December that year.

Those measures, at least as they were intended to encourage the funding for start-ups, included:

- Providing new tax breaks for early stage investors in innovative start-ups: implemented through Subdivision 360-A in the ITAA97 (inserted by the Tax Laws Amendment (Tax Incentives for Innovation) Act 2016 (Cth) and subsequently amended by the Treasury Laws Amendment (2017 Measures No 1) Act 2017 (Cth) – which made a number of minor technical amendments to the original legislation’s CGT concessions to ensure that they applied to investments through an interposed trust – a defect in the original Act);

- Building on already existing measures to encourage venture capital investment in Australia (ie those already available through the operation of the Venture Capital Act 2002 (Cth), associated provisions in the ITAA97 and the ITAA36 and the provisions permitting the formation of ‘incorporated limited partnerships’ in the individual state and territory Partnership Acts – or, in Western Australia, its Limited Partnerships Act 2016). Those ‘bolt-on’ measures were also implemented – and amended – through the Tax Laws Amendment (Tax Incentives for Innovation) Act 2016 (Cth) and the Treasury Laws Amendment (2017 Measures No 1) Act 2017 (Cth); and

- Allowing companies to attract financing through crowd-funding.

Crowd-funding is a means whereby entrepreneurs can raise relatively small amounts of funding (up to A$5 million per year under the new legislation) from a large number of investors in exchange for equity in their company. There is an existing scheme in New Zealand under which new companies can access up to NZ$2 million each year in crowd-sourced equity funding (CSEF): see Financial Markets Conduct Act 2013 (NZ) and Financial Markets Conduct Regulations 2014 (NZ) and, in its first year of operation it allowed more than 20 start-ups to raise, in total, more than NZ$12 million. Similar provisions also apply in the US (annual cap US$1 million), the UK (uncapped), some provinces in Canada (annual cap C$500,000) and a range of other, mainly European, countries.

The focus of the new Australian legislation is on removing the regulatory impediments that the Corporations and Markets Advisory Committee (‘CAMAC”) identified in its 2014 Review as making this form of fund-raising too costly and impractical for start-ups and other small businesses because of excessive compliance costs. It therefore merely modifies (or exempts) some of the otherwise applicable corporate governance and reporting requirements for public companies that meet its threshold eligibility tests.

It appears, however, that there has been no real consideration of the taxation implications. In many ways that seems strange given the very detailed consideration that the Government gave to the equivalent implications for ‘early venture capital investments’ (ECVIs) through VCLPs, ESVCLPs, AFOFs and VCMPs, and for ‘early stage investors’ in Early Stage Innovation Companies (ESICs) – and the tax incentives that it provided to encourage those investments.

This paper will consider this apparent discrepancy and its possible ramifications for the likelihood that the new provisions will achieve their aim – particularly if, as was mooted in this year’s Budget papers, crowd-funding is extended to proprietary as well as public companies.
2 LACK OF CLIMATE TAX POLICY MEASURES TAKING ITS TOLL – IMPROVEMENTS TO FUEL EFFICIENT IN ROACH VEHICLES HAS STALLED

ANNA MORTIMORE, GRIFFITH UNIVERSITY

The National Transport Commission (NTC) reported its lowest rate of improvement in the average CO2 emissions intensity of new light vehicles and BITRE projects that failure to introduce climate policy would lead to increases in the differences of light vehicle efficiency between Australia and other countries. Consumers’ car purchasing trend for larger CO2 emitting vehicles increased in 2016. The proportion of green vehicles sold in 2016 reduced to 2.5% from 4.7% in 2015 of total car sales. The NTC report showed a decline of 80% in total electric vehicle sales in 2016 (219 sales) compared to 2015 (1108 sales). This is in direct contrast with all other OECD countries that are accelerating the market for electric vehicles and decarbonising their new vehicle fleet. The UK Government followed France by announcing in July 2017, their plans to ban the sale of new petrol and diesel cars by 2040. Other countries have similar transition plans: Norway and the Netherlands plan to phase out fossil fuel cars by 2025; India plans to become a 100% electric vehicle nation by 2030; California and seven other U.S. States goal is to have 3.3 million electric vehicles on the road by 2025. Global car manufacturers are also setting targets, such as: Renault-Nissan’s plan for 20% of its sales be EV in 2020 (more than one million vehicles per year); Tesla plan to produce 500,000 EV by 2018; Volvo will only manufacture EV and hybrids by 2019; the Chinese automaker (BYD) will sell 500,000 EV by 2020 and Volkswagen announced a sales target of 2–3 million EV by 2025.

To make this transition the above governments are providing significant support to global car manufacturers and incentives to consumers. The literature finds the failure to introduce such measures will allow global car manufacturers to import their least fuel-efficient models and restrict the most efficient model being offered in Australia, because risk averse consumers who substantially undervalue fuel savings and fuel economy when buying a new car, cause market failure. The paper addresses the challenges faced by Australian Government in stalling the introduction of climate policy measures.

3 FUTURE PROOFING PERSONAL INCOME TAX DESIGN IN A PLATFORM ECONOMY WITH MULTIFARIOUS IDENTIFIERS

NEIL WARREN AND ROB NICHOLLS, UNIVERSITY OF NEW SOUTH WALES

Economists espouse the virtues of competitive markets. However, to function, one of the attributes required is perfect knowledge of prices, costs, quality and technology by consumers and producers – but this requirement is rarely observed. With the rapid growth of the platform economy and with it broad access to low-cost information, perfect knowledge could soon be a reality in many markets. The important question, from a tax system design and administration perspective, is whether achieving perfect knowledge as a case of “be careful what you wish for”.

This paper argues that as the perfect knowledge revolution gathers pace alongside the rise in the platform economy, not only will personal income tax integrity be challenged, but so too will its design and fairness. While we are attracted to how these platforms improve knowledge symmetries, a down side is that low-cost sharing of information on how to minimize income tax through time and mix shifting of income will challenge current design. Equally, the introduction of information asymmetries brought on through opaque transactions will challenge tax administrations.

Future proofing the personal income tax in an environment where transactions are digital, decentralised and have multifarious opaque identifiers is a major challenge to many accepted income tax norms.

Assuming the platform economy is unstoppable, the critical question is whether there is a personal income tax policy design which is future proof both from a tax design and tax administration perspective. This paper argues that the only feasible option is one which would require a comprehensively broad-based flat rate accruals-basis personal income tax design accompanied by a withholding system of tax administration, the abandonment of the need to lodge annual returns and the removal of all cash.

While this proposal meets some long-held policy design attributes sought by economists, the important question is whether such a design is administratively feasible and compatible with a platform economy. It will be argued that it is feasible administratively because cash is dispensed with and a withholding tax regime put in place. In terms of compatibility with an expansive platform economy, future payment settlement systems will be assessed and it will be concluded that the proposed income tax design should be future proof as it builds on the strengths of the platform economy.

The challenge for tax policy designers is how then to articulate the case for a “jump” into the future with income tax design when there are just signs of endemic failure rather than when systemic failure of design and administration forces them to “jump”.
1 IS THERE ONLY “SELF” LEFT IN INCOME TAX SELF-ASSESSMENT? THE WINNERS AND LOSERS 30 YEARS ON
MICHAEL DIRKIS AND BRETT BONDFIELD, UNIVERSITY OF SYDNEY

In 2008 the authors surveyed the state and historic development of income tax self-assessment in Australia in ‘ROSA’S Last Gasp: The Final Steps in Self Assessment’s 21 Year Journey’ published in Volume 3 Number 2 of the Journal of the Australasian Tax Teachers Association. In that paper it was noted that the move to self-assessment was driven by the desire to improve the cost efficiency of revenue collection by liberating assessing resources within the Australian Taxation Office (ATO) to audit activities while streamlining interaction between taxpayers, their advisors and the ATO. However, its introduction fundamentally altered the balance of power and focus of responsibilities between taxpayers (and their advisors) and the ATO. Now, with self-assessment 30 years of age it is time to reflect on the current landscape.

Firstly, this paper will review whether there were any further significant developments arising directly or indirectly from the Review of Self-Assessment (ROSA) or whether this initiative simply faded from view. The paper will then explore developments over the last decade that impact on the relative positions of the taxpayer and the ATO.

In more recent years, with the advent of pre-filling there has been a marked growth the information required and the information reporting requirements being imposed on third parties. Pre-filling in particular requires third parties to report information to the Commissioner about transactions that could ‘reasonably be expected to have tax consequences for other entities’. These transaction types are vastly broader than just interest on bank deposits and include dealings in real estate and shares.

There are also increasing requirements for early self-disclosure (as opposed to self-assessment) required of taxpayers, such as the proposed continuous ‘early disclosure’ of tax positions of large enterprises to the ATO. This is being leveraged from the current need to lodge a ‘reportable tax position schedule’ as a schedule to the income tax return that requires large businesses to disclose their most contestable and material tax positions.

Finally, the paper considers the increase in the amount of data creation is being required by the tax system. In part the above two areas require data creation by third parties or taxpayers to satisfy the ATO requirements. In addition there are initiatives such as Country by Country reporting which applies to large multinational enterprises to set out their transnational internal dealings as well as their global economic footprint.

The paper concludes with a discussion drawn from the analysis of the trends disclosed above and considers whether the recognition of balancing the relative powers of the ATO and taxpayers has faded from view and how that impacts self-assessment or whether the concept of self-assessment is becoming redundant.

2 THE NEED TO SHARE THE BURDEN OF SELF-ENFORCEMENT IN THE INTERNATIONAL COORDINATION OF TRANSFER PRICING GUIDELINES
AMIR PICHHADZE, DEAKIN UNIVERSITY

Through an analysis of the coordination game in the international transfer pricing regime, as can be seen from the perspectives of ‘game theory’ and ‘rational choice theory’, this article advances the existing understanding of the nature and needs of this legal regime. More specifically, it identifies that this regime is based on a non-cooperative model of coordination. The relational (soft law) agreement which the parties in this game have formed – i.e. the OECD’s Transfer Pricing Guidelines – necessarily requires having its members (players) undertake mechanisms of self-enforcement that will ensure compliance with that agreement, which has as its aim the realization of a public good (i.e. a public good game) that is in the common interests of states. Self-enforcement, to avert the risk of defection from the agreement, is necessary in order to optimally achieve the players’ shared objective(s). The article exemplifies the risk of defection through Australian and Canadian case law. The article also identifies an existing mechanism for self-enforcement, as exemplified by the legislative approaches in the UK and Australia. By their approach, domestic hard law requires carrying out the transfer pricing analysis in a way that best achieves consistency with the OECD’s guidelines. Based on recent Australian and UK case law, the article identifies that this approach can provide an effective, practical and realistic mechanism for self-enforcement, and thus it could/should be transplanted, if and as needed, in other jurisdictions that follow the OECD’s transfer pricing guidelines, such as in Canada.
TAX COMPLIANCE BEHAVIOURS OF MARGINALISED GROUPS: THE CASE OF INDIGENOUS AND POLYNESIAN BUSINESS TAXPAYERS

SUE YONG, AUCKLAND UNIVERSITY OF TECHNOLOGY

In the past, a significant number of tax compliance research has concentrated on mainstream taxpayers and not on marginalised groups. With the sparse research on marginalised groups, very little is known of their tax compliance behaviours. There are two reasons for the lack of knowledge pertaining to these groups. They are (a) difficulty accessing these groups; and (b) alternative research methods are preferred. This study aims to understand the tax compliance behaviours of two marginalised groups in New Zealand, namely the indigenous Maori and the Polynesian taxpayers. These groups are of interest as they constitute two of the four largest and fastest growing ethnic groups in New Zealand. However, these groups have been marginalised due to the social and economic stigmas associated with their high tax welfare dependency, imprisonment and poor health statistics. This study focuses on the tax compliance behaviours of 18 indigenous and Polynesian business taxpayers. The accounts of these taxpayers are triangulated by the accounts from eight tax practitioners and 15 business mentors. The study found that culture plays an important role in the tax compliance behaviours of marginalised groups. This study contributes to the existing tax literature that culture plays a bigger and more important role for marginalised groups compared to mainstream taxpayers. Given that, there are important policy and regulatory implications based on the findings.

Thursday 18 January 2018 from 4.00pm – 4.50pm
(Parallel Sessions)

5A – TAX ISSUES

1 TAXATION AND THE “ORGANISMIC” BEHAVIOUR OF FIRMS: DARWINIAN RATIONALE AT WORK?

SHAFI U. KHAN NIAZI, MONASH UNIVERSITY

Lecturer, Department of Business Law and Taxation, Monash Business School Building on an interdisciplinary approach, this study explores the “organismic” nature and tax behaviour of firms within a Darwinian framework. It traces the Darwinian logic in tax behaviour of multinational firms. The firms struggle and compete to maximize profits. This study labels the income generation activities as “organismic” traits manifested by firms, akin to the struggle for survival among the living species.

The proximity between Malthusian economics and biological evolutionary theory is well established since formulation of Darwinian principles on “struggle for existence, natural selection and survival of the fittest”. In life sciences, Theodosius Dobzhansky, the renowned evolutionary biologist, once stated that “Nothing in biology makes sense except in the light of evolution”. In economics, on the contrary, Ronald Coase notes that although “economists take pride in the fact that Charles Darwin came to his theory of evolution as a result of reading Thomas Malthus and Adam Smith”, yet the scholarship in economics is far from having the triumph that biology has gained in “detailed understanding of the complicated structures that govern the functioning of living organisms”.

Admittedly, it is hard to draw analogies between economics and biological evolution when the latter is explained in terms of DNA and genetic evolution. Equally, the central role of evolution in biology provides a single theoretical framework to comprehend all aspects of life that indeed is missing in economics. Nevertheless, the changing tax behaviour of firms in increasingly globalized transnational markets deserves scholarly attention to explore Darwinian rationale, if any.

Although there is a literature gap at the intersection of tax economics and biology within the Darwinian framework; nevertheless, it is well established in tax literature that firms tend to prefer low or no tax jurisdictions. From the transaction cost economics perspective, one can argue that firms choose low tax markets to minimize their costs, i.e., to maximize profits, or, in behavioural economics terms, strive to survive better. To that end, the study uses key Darwinism tenets to explain the “living” nature of firm, and its quest to maximize fitness and struggle for survival are labelled as its organismic nature. Building on the famous Friedmanian thesis that firm has the responsibility to maximize profits, this study posits profit optimization as running in “genes” of firms. The success (or failure) of firms to raise profits increases (or decreases) the probability of their survival and expansion (reproduction in biological parlance).
In a transaction cost paradigm, the tax-related costs incurred by firms are higher (lower profits) in high tax markets. The result being that in their quest for a higher profit (better survival), firms tend to occupy those markets (“biological niches”) where there is low taxation. The recent wave that revealed some of the mega tax-scandals, such as LuxLeaks in Europe and Panama Papers worldwide, is a by-product of this cost reduction nature of firm species. To curb the harmful tax behaviour that “runs in genes” of firm species, this paper supports regulatory regime such as one under the BEPS project.

2 INSOLVENCY AND BANKRUPTCY: THE IMPACT OF GARNISHEE NOTICES ON TAXPAYERS
SILVIA VILLIOS, UNIVERSITY OF ADELAIDE

One of the most effective debt collection powers available to the Commissioner of Taxation (Commissioner) is the power to issue a notice to a third party that owes money to or holds money for a tax debtor under section 260-5 of Schedule 1 to the TAA 1953 (section 260-5), otherwise known as a garnishee notice. This paper will discuss, in the context of insolvency and bankruptcy, how tax debtors are likely to be impacted as a result of the use of this power by the Commissioner. An analysis will be made as to whether the Commissioner’s power to issue these notices is achieving the recognised tax policy criteria of fiscal adequacy, efficiency, equity and simplicity. In particular, it will be argued that the issue of a section 260-5 notice has regrettable consequences when it comes to attempts to implement corporate rescue and give tax debtors a “fresh start”. This results in considerable disharmony at the intersection of tax law and insolvency and bankruptcy law. The paper suggests areas for reform and considers directions for future research and action.

5B – TAX REFORM

1 REFORMING THE TAXATION OF TRUSTS: AN OPPORTUNITY TO RECONSIDER THE TREATMENT OF CONSTRUCTIVE TRUSTS
CELESTE M. BLACK, UNIVERSITY OF SYDNEY

Periodically there are proposals to reform the taxation of discretionary trusts and this last year has been no exception. Much has been written about the tax treatment of such arrangements, but this paper will consider a less common, but still relevant, cousin in equity, the constructive trust. Recent litigation confirms the continuing importance of the constructive trust in the corporate sphere, for example see the decisions in Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6 and Westpac Banking Corporation v The Bell Group Ltd (in liq) [2012] WASCA 157. However, the tax consequences that flow from the recognition or imposition of a constructive trust have not been judicially considered in great detail since the 1995 decision of Burchett J in Zobory v Commissioner of Taxation [1995] FCA 1226. This paper will examine the consequences of applying the approach taken by Burchett J in Zobory to circumstances such as those presented in Grimaldi (No 2) and Westpac v Bell Group. It will also consider the potential application of the CGT regime to such cases and the interaction of such rules with the operation of general tax law principles as seen in Zobory, thereby highlighting the need for reform in this area. Building on the recommendations of the Review of Business Taxation and the work of Professor John Glover, this paper will develop a proposal for reform of the tax legislation in relation to constructive trusts to thereby produce greater certainty and equity in tax outcomes.

2 INCOME TAX, THE INDIGENOCIDE OF ABORIGINAL PEOPLE AND AUSTRALIAN SOCIETY
JOHN PASSANT, AUSTRALIAN NATIONAL UNIVERSITY

In this discussion I adopt a thematic approach to the history of income tax in Australia, concentrating on the foundational theme of Australian society, the indigenocide. We cannot understand income tax today as an expression of Australian capitalism without understanding the indigenocide, and the role income tax plays as an expression and reinforcement of the systemic indigenocide that is Australian society.

I use indigenocide rather than genocide to describe the destruction of Aboriginal life in Australia. I do this to avoid the unnecessary and in the end what I regard as futile and circular discussions about intent, about the nature of the actors perpetrating the extermination, and to avoid any hint of diminishing the Holocaust. What then is indigenocide? As Evans and Thorpe say, indigenocide is a reference to:
... those actors (governments, military forces, economic enterprises or their agents, private individuals etc.) who carry out destructive actions, policies and practices on Indigenous/Aboriginal individuals, families and groups mainly because of their perceived indigeneity or ‘Aboriginality’.

This destruction in toto is both an event that never ends and a system that continues today. It is, to borrow in part from Patrick Wolfe, a structure, not an event.

The indigenocide past and present of Aboriginal people is the bedrock, the grundnorm if you like, of Australian society, including the Australian income tax system. In short, as Barta puts it ‘Australia … is a nation founded on genocide.’ But it is more than that. It is a society of indigenocide.

I see the interrelationship between indigenocide and income tax as a dance of the double helix. Income tax is not only the consequence of Australia’s establishment as a colonial settler society and maturation into an advanced capitalist country. It is also a foundation for the very state and economic system which not only continues but indeed is the indigenocide today. Income tax expresses and reinforces the structures of indigenocide. It is one of those structures. Income tax helps the state and society ‘live out a relationship of genocide,’ and to recreate, and by its very existence and reconstruction day in and day out, be the indigenocide.

5C – COMPLIANCE

1 IS THE COMMISSIONER OBLIGED TO CORRECT AND INCORRECT TAX RETURN?

JULIE HARRISON AND MARK KEATING, UNIVERSITY OF AUCKLAND

It has long been the law in both Australia and New Zealand that the Commissioner cannot be obliged to voluntarily amend a taxpayer’s assessment to ensure it is “correct” simply because the taxpayer regrets the tax position they have taken and now seeks to achieve a better outcome. Outside the challenge or appeal process the Commissioner will normally only exercise the discretion to reassess a taxpayer under s 170 Income Tax Assessment Act 1936 and s 113 Tax Administration Act 1994 to “correct” an incorrect assessment. But must they do so in all cases?

In New Zealand taxpayers are generally obliged to apply for the Commissioner to exercise her discretion to reassess their return – but Inland Revenue has long adopted a narrow policy restricting when that discretion will be exercised. As a result, frustrated taxpayers have repeatedly sought judicial review of the Commissioner’s refusal to amend their returns – and the courts have generally supported their position. Two recently decided cases (in Westpac Securities NZ Ltd v CIR (2014) 26 NZTC 21-118 and Charter Holdings Ltd v CIR [2016] NZCA 499) have forced the Commissioner to revise her policy. Nevertheless, Inland Revenue continues to limit the exercise of that discretion and its newly released policy appears to pay no more than lip-service to those decisions.

This paper explains the case law regarding exercise of the Commissioner’s general assessment discretion and attempts to explain why Inland Revenue seems so reluctant to give full effect to those decisions. It concludes that expediency and the Commissioner’s desire for administrative efficiency continually clash with her statutory duty to ensure all assessments are correct and therefore statutory reform is required to give taxpayers greater rights to dispute an assessment they believe is incorrect.

2 TAX COMPLIANCE FACTORS IN THE NEW CENTURY: A LEXIMANCER ANALYSIS

SUE YONG AND KAREN LO, AUCKLAND UNIVERSITY OF TECHNOLOGY

There has been much research undertaken on tax compliance factors and the reasons why people pay their taxes. Tax compliance research is important as it has implications on policies, practice and academic knowledge. Extensive research was done by Jackson and Milliron in 1986 and Richardson and Sawyer in 2000 in identifying key tax compliance factors. This present study is an extension of these two research. The aim of this study is to identify the tax compliance factors which has been researched in the 21st century i.e. from 2000 to 2016. A text mining software using Leximancer has been used to visualise the frequency and co-occurrence of concepts and themes related to tax compliance factors. Data was drawn from 686 articles obtained from 13 research databases pertaining to taxation, accounting, social sciences, law, economics, business, political sciences and psychology journals. The data was collected over a period of 2 years.
This study is a depository of all the tax compliance factors identified in the new century with visual features to guide researchers on the areas of new tax compliance factors. It has been found that tax morale, culture and religiosity are amongst some of the “new” tax compliance factors that has been researched over the past 16 years. This study provides some insights into the gaps in tax compliance literature as well as providing a pool of resources for new and experienced tax compliance researchers.

5D – VAT/GST

1 ESTIMATING THE CASH FLOW AND MANAGERIAL BENEFITS OF COMPLYING WITH THE VALUE ADDED TAX REQUIREMENTS: THE CASE OF SMALL AND MEDIUM ENTERPRISES IN BOTSWANA

TSHEPISO MAKARA21 AND NTHATI RAMETSE22

Businesses in many countries are required to comply with Value Added Tax (VAT) requirements. In Botswana, the VAT legislation was introduced July 2002. While the compliance costs that come with the efforts to adhere to stringent VAT regulations are known to be regressive, businesses also gain in the form of cash flow enhancement and managerial improvement. This paper presents the estimates of the cash flow and managerial benefits of VAT compliance for Small and Medium Enterprises (SMEs) in Botswana for the years 2009/10 and 2010/11. Emphasis is placed on small businesses because they have a significant influence on employment creation and sustainable development of the country.

This study employed questionnaire surveys to collect data on VAT compliance benefits from the SMEs in Botswana. Cash flow benefits are estimated at P59 million and P67 million, in aggregate, for the years 2009/10 and 2010/11, respectively. Aggregate managerial benefits are estimated at P79 million for 2009/10 and P94 million for 2010/11. Cash flow benefits represent around 0.6 per cent of the Gross Domestic Product (GDP) and 1.6 per cent of VAT revenue for both years. Managerial benefit estimates represent roughly 0.8 per cent of the GDP and 2 per cent of the VAT revenue for both years. The findings in this study indicate that SMEs in Botswana gain significantly from complying with the country’s VAT legislation requirements.

2 CROSS-BORDER GOODS TRANSACTIONS THROUGH CHINESE E-COMMERCE PLATFORMS: COMPLIANCE DIFFICULTIES FOR THREE TYPES OF TAXES, VAT REFORMS, AND THE NEW WINNERS

EVA HUANG AND NAN XI

Shopping on e-commerce platforms is no longer a new phenomenon. Buying and selling goods on this medium naturally gives rise to cross-border transactions that involve the internet. Due to the size of the population, Chinese e-commerce platforms such as Taobao and T-Mall of Alibaba, and JD.Com undoubtedly are market leaders.

The typical modes of goods transaction via e-Commerce platforms are consumer to consumer, business to consumer, business to business, and operator to consumer transactions. One heated debate now, especially in China, revolves around the challenges of taxing these transactions. The Business Tax to VAT tax reform that was completed in 2015 presents new tax compliance challenges that resulted in a new group of winners, namely, suppliers of technological solutions.

The international tax compliance issues for traditional transactions are relevant to these new transaction types. The main feature cross-border goods transactions through E-Commerce Platforms that differ from traditional transactions is that the internet facilitates those transactions, thereby leaving a digital footprint at every stage of the transaction. These digital footprints could be captured by technology.

This paper identifies the particular tax types that are of concern. They are customs duties, value added tax (VAT) and income tax. The paper discusses types of transactions involving different parties, and analyses the possible tax liabilities and taxing points during the cross-border movements of the good, from the seller to the buyer, and the digital footprint they are leaving.

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ABSTRACTS

Friday 19 January 2018 from 11.40am – 1.10pm (Parallel Sessions)

6A – TAX ISSUES/EMPIRICAL

1  PERCEPTION OF LARGE AND MEDIUM BUSINESS TAX LAW COMPLEXITY: A PRELIMINARY AUSTRALIAN STUDY

ROBER DEUTSCH, HUGHLENE BURTON, STEWART KARKINSKY AND BINH TRAN-NAM, UNIVERSITY OF NEW SOUTH WALES (SYDNEY AND CHARLOTTE) AND SAN JOSE STATE UNIVERSITY

Tax law complexity is an evergreen tax policy issue and tax simplification has been consistently cited as an important motive for tax reform in Australia and overseas in the past 40 years. Yet there is surprisingly a limited knowledge of which specific tax issues that give rise to complexity burden to business taxpayers. In the Australasian context, there are a few papers dealing with tax practitioners’ perception of small business tax law complexity. These studies built on previous US research on the same topic. Recently, further US studies on large and mid-size business tax law complexity have been conducted.

To complete the overall picture for Australia, it seems worthwhile to conduct a new project on perceptions of large and medium business tax law complexity. Unlike the previous Australian studies that focussed on tax practitioners (due to the small size of businesses under study), the new project will attempt to collect data on the perceptions of four groups of largely distinct stakeholders: tax directors, tax practitioners, tax administrators and tax academics.

The purpose of this conference paper is to review the recent, relevant US-based studies, describe the aim of the project, and discuss its research methodology and potential significance. Particular attention will be paid to the data collection strategy, including sample selections and questionnaire design. Preliminary data analysis, if available on time, will then be reported.

2  BAD LEADER FOR BAD GAME: EMPIRICAL STUDY OF HARMFUL TAX COMPETITION IN ASEAN COUNTRIES USING NASH-STACKELBERG COMPETITION APPROACH

ANDREAS R. DEWANTARA AND RIKO RIANDOKO, INDONESIAN STATE COLLEGE OF ACCOUNTANCY

On 2016, the President of Indonesia argued that the need to reduce Indonesian corporate tax rate was particularly driven by Singapore. Singapore’s Corporate Income Tax rate is 17%, compared to Indonesia’s 25%. Such competition to reduce tax rate is considered harmful since it will result in lose-lose situations. Some studies further showed that countries engaging in tax competition are potentially unable to achieve their tax revenue targets and thus increase their deficits. This is why tax competition is considered harmful as it reduces the welfare of the citizens.

Ideally, tax cooperation is more preferable than tax competition in a globalized and integrated economy due to the latter’s welfare loss inducing effect. The creation of ASEAN Tax Forum in 2011 can also provide an opportunity towards tax policy harmonization. Since the desire to maintain policy harmonization, it is important to understand the taxation policy interaction between ASEAN countries. In other words, it is important to know whether tax competition and strategic interaction –importantly within a regional economic bloc like ASEAN– really takes place.

This paper contributes to the empirical literature to seek answer whether corporate tax rate of ASEAN countries follow each other based on a pure Nash model, or follow a designated leader in Stackelberg models while still behaving in a Nash way. Brunei, Indonesia, Malaysia, Philippines, Singapore, and Vietnam are chosen individually as a Stackelberg leader through 7 models of regression, 1 Nash model and 6 models for each designated leader. Furthermore, we want to know whether neighbors’/leader’s corporate tax rates predict own country’s corporate tax rates. To test for predictive causality, we use Dumitrescu-Hurlin Granger causality test in our analyses.

To perform regression analysis and causality test, data are collected from IMF Statistical Appendix and each 7 countries’ official statistical publication for 1996–2015. We further accounted for several missing observations by supplementing them using the data from ADB and OECD.
We initially find a significant correlation in the pure Nash model that in ASEAN countries. There exists a positive reaction from other countries when a country sets its tax rate. Nevertheless neighbors' tax rate is not always significant in Stackelberg models. ASEAN countries are not too strongly competing among themselves. That it may be wrong to say that there is no policy competition in the region simply because of the absence of conclusive explicit tax competition. We also find no Stackelberg leader in ASEAN in this regard. These results indicate that there is no explicit tax competition among ASEAN countries, only tax interaction. Further investigation using Dumitrescu-Hurlin Granger causality tests also supports the conclusion that there is no explicit tax competition in ASEAN, only tax interaction. The existence of tax interaction as a possible explanation has actually been accounted for by the choice of our tax measure.

3 SHARING THE BURDEN – TAX REFORM’S SHIFTING WINNERS AND LOSERS: THE TAXATION TREATMENT OF NON-AUSTRALIAN CURRENCY GAINS AND LOSSES

STEVEN STERN\textsuperscript{23}, VICTORIA UNIVERSITY

Under Australian taxation law, foreign currency amounts are translated into Australian currency. How this conversion occurs and its timing necessarily shifts burdens creating winners and losers, between the taxpayer and the revenue authority, and between taxpayers as commercial entities themselves. Appreciation or depreciation of the Australian dollar against the currency in which a commitment is denominated or discharged by payment results in an exchange gain or loss. There is the ever increasing use by Australian enterprises of overseas financial facilities to fund their daily business activities and longer-term investment strategies. Furthermore, business enterprises and individual consumers globally are turning to digital currencies such as bitcoin.

The volatility of bitcoin’s value is notorious. With the floating of the Australian dollar in December 1983, instability in its value relative to major foreign currencies has become a frequent characteristic of international money markets. Consequently, reform of Australian taxation laws on exchange gains and losses given the fluctuating conversion rates between Australian and non-Australian currencies, covering digital currencies such as bitcoin, demands attention.

The floating value of the Australian dollar compared to foreign currencies is subject to the foreign exchange gain and loss rules in Division 775 of the Income Tax Assessment Act 1997 (Cth). These rules have been described as fairly “obscure”. They are supposed to be reviewed in accordance with the May 2016 budget announcement to try making them more straightforward to understand and apply. In accordance with an announcement made in 2016 by the Federal Treasurer, the Hon Scott Morrison MHR, the May 2017 budget has confirmed that from 1 July 2017, digital currencies, such as bitcoin, would no longer suffer a “double taxation” burden by their use in payment effectively bearing Goods and Services Tax twice: once on the purchase of the digital currency and again on its use in exchange for goods and services, subject to the GST. The objective of the May 2017 announcement is to remove an obstacle for the financial technology sector to grow in Australia.

This development is significant because, although digital currencies in Australia might remain niche, Distributed Ledger Technology inspired by bitcoin’s “block chain” has generated significant interest among businesses. According to the Australian Securities and Investments Commission, as at early 2017, it expects the range of potential uses of DLT to grow exponentially over time.

This paper addresses what is to be implemented from 1 July 2017 in accordance with the Federal Treasury’s May 2017 budget announcement, with a view to identifying the winners and losers (e.g. the move is said to result in a small but unquantifiable decrease in GST collections and associated payments to the States and Territories over the forward estimates period); how the tax burden consequently may be shifted; how any such changes would impact upon growth of the financial technology sector in Australia; and what further changes might need to be made than those announced with the May 2017 budget papers to commence from 1 July 2017.

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6B – TAX POLICY

1 HOW CANADIAN GOVERNMENTS HAVE USED THE IDEA OF “WINNERS” AND “LOSERS” TO GAIN POLITICAL FAVOUR

TAMARA LARRE, UNIVERSITY OF SASKATCHEWAN

Governments use various means of communicating tax policy changes to taxpayers, and in Canada the Federal Budget is among the most important. Not surprisingly, the messaging in this document is carefully crafted to convince voters of the merits of the announced policy changes. In Canada, one strategy that appears to be used is identifying “winners” and “losers” resulting from tax policy changes. This paper explores how, when, and why this strategy is used, and compares usage by the current (and more centralist) Liberal government with the previous Progressive Conservative government.

Some recurrent winners in the budget documents of both governments include families and the very broad category of “all Canadians”. While the documents have more commonly focused on the “winners”, “losers” were identified where they were groups disliked by the general public, such as tax “cheats”.

The Liberal government has, in both its budgets to date, chosen the middle class as the deserving and undisputable “winner”, at the expense of the wealthy. “Middle class” is a nebulous term, and this paper explores how its use is somewhat misleading in certain cases, though this strategy is likely to prove politically savvy.

The previous Progressive Conservative government focused primarily on assisting businesses, small businesses and manufactures in particular, to improve the economy for the advantage of Canadians as a whole, though the extent to which these tax cuts actually advantaged all Canadians is difficult to determine. In contrast, the current government, has almost demonized small businesses by linking them to tax avoidance strategies, and has announced proposals to shut down a number of loopholes wealthy individuals are using through plans involving private corporations. From the public response to-date, it is clear that the “losers” of these announced changes are represented by quite vocal tax professionals (who are quite likely to become “losers” themselves).

Throughout the paper, an effort is made to explore the truthfulness of the government’s statements. In doing so, it becomes apparent that determining the “winners” and “losers” of tax policy changes requires difficult tasks such as predicting economic impacts, tax incidence, behavior changes, new planning strategies, the combined effect policy changes, and judicial interpretation. This uncertainty, however, may work to the advantage of governments, in that they can chose to identify the most politically expedient beneficiaries and (unwilling) benefactors to suit their political messaging.

2 LAWS TO PROTECT TAX WHISTLEBLOWING IN AUSTRALIA: WHAT DOES THIS MEAN FOR TAXPAYERS AND THE TAXATION PROFESSION?

JOHN MCLAREN, CHARLES DARWIN UNIVERSITY

The Commonwealth Government is keen to explore the development of statutory laws to protect whistleblowers in the taxation environment. The Commonwealth Government has asked for submission on their consultation paper, *Review of tax and corporate whistleblower protections in Australia* which was released on 20 December 2016. The Corporations Act already has comprehensive provisions designed to protect whistleblowers that disclose breaches of the act to ASIC. These provisions do not protect whistleblowers that have knowledge of tax avoidance or tax evasion by a client or business entity. The Government envisages that the law would provide protection to whistleblowers such as accountants, tax agents, legal advisers, financial service providers, employees of the entity or business contractors. While it might be good for the Government to institute laws that protect whistleblowers, what about the rights of the taxpayer and the tax professional? Taxpayers expect their tax adviser to maintain the confidentiality of their financial affairs and to observe their fiduciary duty to them.

This paper will examine the objectives of the Government in introducing tax whistleblower laws and the existing whistleblower laws in both the private and public sectors in Australia. The paper will then discuss the fiduciary duties of the tax adviser and the importance of legal professional privilege in protecting the rights of the taxpayer. In conclusion the paper will critically examine the implications of this initiative for both the tax profession and the taxpayer.
3 THE EFFECT OF TAX AGGRESSIVENESS ON DEBT POLICY WITH INDEPENDENT BOARD AS MODERATING VARIABLE

SILVY CHRISTINA24 AND CHRISTINE TJEN25, TRISAKTI SCHOOL OF MANAGEMENT AND UNIVERSITY OF INDONESIA

Companies have a desire to grow and develop. Companies need money, usually financed by third parties, in order to operate. Financial decisions are one of the most important decisions made by a company. However, finances can be obtained from internal and external sources. Some examples of external sources of finance include debt policy and equity raising. Debt financing is often preferred over equity raising because it attracts a lower cost and is more effective at reducing inter-agency conflict.

Based on previous research by Richardson et al. (2014), there are several variables that have an effect on debt policy. These are tax aggressiveness and the existence of an independent board. Tax aggressiveness refers to minimizing the tax to be paid by a company by maximising on certain loopholes contained within tax regulations. Tax aggressiveness may come from within the company itself, whereby the company has rules regulating the internal supervision of management. The role of an independent board is important to prevent the manipulation of financial reporting. Independent boards can supervise the performance of management because they are independent from the interests of the company. An independent board can assist in preventing tax aggressiveness procedures within the company. Based on this, the research questions are: (1) does tax aggressiveness affect debt policy?; (2) does an independent board affect debt policy?; (3) does an independent board moderate the effect of tax aggressiveness on debt policy?

The sample of this research are non-financial companies that listed in Indonesia Stock Exchange from 2010–2015 excluding investment and banking companies. This research uses multiple regression with 632 observation and 105 companies. This research uses SPSS 23 as a statistic tool for processing data. The debt policy variable calculated by debt to total assets. Tax aggressiveness variable has three measurement using effective interest rate, cash effective interest rate and book tax differences and Independent board calculated by total independent board divided by total board of the company. The control variables are debt ratio of industry, operating income, firm size, depreciation and amortization, fixed assets, growth and firm age.

This research shows that tax aggressiveness has no effect on debt policy, that the proportion of independent board members has a positive effect on debt policy and that the proportion of independent board members does not moderate the effect of tax aggressiveness on debt policy.

The proportion of independent board members has a positive effect on debt policy. This means Tax aggressiveness has no effect on debt policy. It shows that tax implications do not have an influence on the financing decisions of the company. The proportion of independent board members does not moderate effect of tax aggressiveness on debt policy. When the companies requested approval for financing, the board did not consider the tax implications. Therefore, it can be concluded that an independent board has no impact on the decision making process related to company financing, particularly relating to tax aggressiveness.

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1 ADDRESSING SHIFTING BURDENS – BASE EROSION OF INCOME AND CONSUMPTION TAXES
KATHRYN JAMES, MONASH UNIVERSITY

Revenue lost to tax evasion and avoidance is estimated to be in excess of $US 3.1 trillion globally (Tax Justice Network; 2011). Although modern markets enable enormous wealth generation they also enable expanding opportunities for aggressive tax minimisation and evasion by taxpayers with the means and desire to do so. The result of this behaviour is a steady undermining of the notion of a shared tax burden as that burden is increasingly transferred from top income earners/wealth holders to the middle and bottom. It is no surprise that this shift has been accompanied by increasing inequality over the past few decades. This erosion of revenue has significant economic and social implications. For developed countries, it undermines the provision of public goods such as health and education that are integral to economic growth and reducing inequality. For developing countries the money lost to tax minimisation far exceeds that received through foreign aid – thus denying these countries much needed capital to invest in economic and social infrastructure and exacerbating global inequality.

Since the decline in revenues following the global financial crisis, much attention has been paid to the issue of base erosion and profit shifting (BEPS) that undermines the collection of income tax – particularly in the context of multinational companies. The main locus of the response has been the work of the BEPS taskforce within the OECD.

However, experience with the VAT in the past decade has shown that the VAT is also susceptible to base erosion primarily as a result of the increased mobility of consumption in a digital age. The primary response to this issue has been the release of the OECD International VAT/GST Guidelines (2015).

Despite both the income tax and VAT being susceptible to the same issues, very little attention has been paid to the interaction between the two systems – both in terms of problems shared as well as potential solutions that enforcing one base might add to the other and the potential amplification of problems that might result from unforeseen consequences of the interaction of the two systems.

This paper compares some overlaps and inconsistencies in the legal framework for the taxation of income at the international level and the legal framework for the application of VAT on cross-border supplies. It evaluates the Australian approach to these issues in light of the international approach and highlights some vulnerabilities in existing VAT and income tax laws.

2 THE APPROPRIATE TAX TREATMENT OF FINANCIAL SERVICES UNDER PROPOSED VALUE ADDED TAX IN QATAR IN ACCORDANCE WITH THE EXPERIENCE OF DEVELOPED COUNTRIES
MAHMOUD M. ABDELLATIF26 AND BINH TRAN-NAM27, QATAR UNIVERSITY AND UNIVERSITY OF NEW SOUTH WALES

Reforming Qatari tax system implies introduction of Value Added Tax (VAT) which is aligned with GCC fiscal policy as it was agreed that GCC countries will introduce VAT ON 2018. In this context, the GCC unified VAT agreement was released on 2016. The general framework sets out the general measures which each GCC country is going to follow during designing its VAT Legislation. Nevertheless, the unified VAT framework is flexible with regard to taxing hydro-carbon sector and financial sector. As it identified that each country has the right to develop its own measures to tax financial services.

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ABSTRACTS

Imposing VAT on financial services is a debatable issue which makes some countries exclude financial services from VAT legislation. This is attributed to two reasons which are, (1) the specific nature of financial institutions and (2) the difficulty of determining the tax base of financial services. Some countries such as Australia imposed specific tax treatment for financial services under Goods and Services Tax Act of 1999. In Egypt, financial services are taxed only under Stamp Duty Law No 111 of 1980. This situation raises the following research question “What is the appropriate tax treatment of financial services under the proposed VAT legislation in Qatar”. Answering this research questions will achieve the following objectives; (1) reviewing the scholarly works on taxing financial services under VAT legislation, (2) discussing and analyzing taxing systems of financial services, (3) reviewing the proposed VAT legislation in Qatar and how does it tax financial services (4), assessing the VAT impact on financial services, and (5) recommending the appropriate tax treatment of VAT under new legislation.

The theoretical analysis methodology will be used, through reviewing and assessing Taxing systems of financial services. Accordingly, this research paper is structured as follows; section 2 reviews scholarly works on taxing financial services under consumption tax and VAT, section 3 reviews the proposed VAT legislation in Qatar, section 4 assess the impact of new VAT legislation on financial services, section 5 proposes the proper tax treatment of financial services, and section 6 is conclusion.

3 POTENTIAL ISSUES PERCEIVED BY MALAYSIAN BUSINESS TAXPAYERS’ DUE TO THE IMPLEMENTATION OF GOODS AND SERVICES TAX IN APRIL 2015

APPADU SANTHARIAH28, BINH TRAN-NAM29, DALE BOCCABELLA30 AND NTHATI RAMESTE31, RMIT AND UNIVERSITY OF NEW SOUTH WALES

The Goods and Services Tax Bill was first introduced in Malaysia in 2005, after two failed attempts, and finally on the third attempt, the Goods and Services Tax Act 2014 was finally introduced to be effective from April 2015. Since 2005, the private sector and the Government of Malaysia have conducted various programs to educate Malaysian business taxpayers.32 However, little is known or published about business taxpayers’ concerns and their readiness for the implementation of the GST. This study attempted to examine some of the major issues and concerns business taxpayers perceive as key challenges in preparing for the GST. More specifically, four broad issues were investigated, namely: (i) businesses’ readiness to implement the GST, (ii) the GST compliance burden imposed on businesses, (iii) business taxpayers’ perceptions of the Royal Malaysian Customs Department (RMCD) to handle the administration and to provide financial and non-financial assistance and (iv) to determine whether or not business perceptions are related to business characteristics. From April 2013 to June 2013 a survey was conducted with a sample of 1,500 business taxpayers; 426 survey responses were received representing a satisfactory response rate of over 28%. The survey results indicated that business taxpayers are overall poorly prepared for the implementation. Only nine percent of respondents claimed to be substantially ready. With respect to the computer system readiness, only 22% of the respondents perceived to be ready. A worrying finding was that over 25% of respondents who are eligible to register for GST stated they would not register for GST. Over 74% of respondents felt that the GST would place an additional compliance burden on them. Only 24% of respondents stated that they were confident they would get the required assistance from RMCD for GST implementation. Further statistical analyses reveal larger businesses are better prepared for GST overall and smaller businesses felt more stressed about GST. It is concluded Malaysian businesses were poorly prepared in 2013 and do require additional assistance. A number of measures are suggested to alleviate businesses compliance burden. They include compensation for GST set-up costs, closer working relationship between RMCD and business taxpayers so that major problematic issues are dealt with so that business taxpayers are encouraged to register and comply with the GST laws and regulations.

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32. Business taxpayers include sole traders, partnerships, private companies and public companies who are eligible to register for the Malaysian GST.
7A – INTERNATIONAL

1  TAXES AND THE PATH TO ENVIRONMENTAL SUSTAINABILITY IN INDONESIA
HOPE ASHIABOR AND DAHLIANA HASAN, MACQUARIE UNIVERSITY AND UNIVERSITY OF GADJA MADA

Following its emergence from the process of decentralizing its governance structures, Indonesia’s regulatory competence on several matters devolved from the central government to its local governments. In the wake of this transformation, greater powers were conferred upon local governments with respect to matters relating to the regulation of environmental management, as well as the imposition of taxes to mitigate environmental degradation. The regulatory framework governing the local taxing power is the Regional Tax and Levy (Law No. 28 of 2009). This law provides the framework that governs environmental taxes and charges that are levied at local levels.

The country’s embrace of environmental taxes is significant, as unlike other policy instruments, taxes have been shown to provide a cost-effective approach to internalizing negative environmental externalities. This paper critically evaluates the fiscal regime that underpins the imposition of environmental taxes in Indonesia. It in particular delves into the question of the extent to which Law No. 28 adequately addresses the environmental challenges that the country has been grappling with. The paper also examines how the legislative responses under this initiative fit into its wider international commitments for tackling the challenges of environmental degradation.

2  WILL BEPS ALLOW NEW ZEALAND TO FINALLY TAX GOOGLE?
ANDREW M. C. SMITH, VICTORIA UNIVERSITY OF WELLINGTON

Tax avoidance by major US multinationals has been extremely topical over the last decade since the GFC. One of the MNEs at the forefront of this controversy is Google. It has been able to snare a dominant share of the international online advertising market without paying any significant amounts of tax in countries where it obtains orders other than the US.

It has been able to do so by structuring its affairs so that it does not have a “permanent establishment” (PE) in New Zealand. Instead its New Zealand customers conclude contracts directly with Google subsidiaries in countries which New Zealand has concluded a DTA with but otherwise impose low taxes such as Singapore and Ireland.

The BEPS project has been undertaken by the OECD to deal with MNE tax avoidance. New Zealand has been an active participant in this project seeing a multilateral forum such as the OECD as the best way to deal with this problem rather than taking independent steps of its own. The multilateral instrument (MLI) arising out of the BEPS project is designed to modify a large number of the world's DTAs at one time to deal with this tax avoidance problem such PE avoidance by MNEs such as Google.

The MLI is a modular convention in that signatory states do not have to agree to adopt all parts of it. This paper analyses the responses of several of New Zealand’s key DTA partners in respect of Part IV of the MLI dealing with PE avoidance. It will be concluded that the MLI is unlikely to prove effective for New Zealand in deal with tax avoidance by Google. It appears that New Zealand may need to adopt a unilateral strategy to effectively tax Google on its profits earned from New Zealand advertisers outside the BEPS project as has been done in Australia, India and the UK.
7B – TAX DISPUTES

1 TAX DISPUTES: SHARING THE BURDEN OF RESOLUTION BETWEEN TAXPAYER AND TAX OFFICE; AN EVALUATION OF THE NZ REGIME AND LESSONS FOR REFORM FOR AUSTRALIA

JULIE CASSIDY AND MICHAEL BLISSENDEN, UNIVERSITY OF AUCKLAND AND UNIVERSITY OF WESTERN SYDNEY

In New Zealand the disputes resolution regime for all taxes administered by Commissioner of Inland Revenue is contained in Pt IVA Tax Administration Act 1994 (‘TAA’). The current regime came into effect on 1 October 1996. It will be seen that these reforms dramatically turned the tax disputes process in New Zealand ‘on its head’. It also shifted the burden leading up to the dispute resolution process and now provides for multiple options for addressing conflict.

The introduction of a new regime was originally proposed in the Report of the Organisational Review of Inland Revenue Department (‘IRD’) in 1994. The Report noted that the “way disputes are resolved is critical to taxpayer perceptions of fairness and has wider impacts for the tax administration”: at [65]. It concluded that the “present disputes resolution process is deficient”: at [65]. The aim of the current regime is to promote an “all cards on the table” approach to disputes: SPS 11/05 at [6]. It dictates a series of document exchanges with strict time limits. Thus the dispute occurs before the assessment.

In Australia the tax dispute resolution process is set out in Part IVC of the Taxation Administration Act 1953 (TAA), which is triggered by s 175A of the Income Tax Assessment Act (1936). The essence of s 175A is that it allows for the taxpayer, who is dissatisfied by an assessment, to object to it in the manner set out in Part IVC of the TAA. The basis of this approach is that it is taxpayer initiated and that the Tax Office is not required to do anything else after raising of the assessment. There is some encouragement for the ATO to resolve the dispute as per PS LA 2013/3, but the formal dispute resolution mechanism is the only structured entry point. This is reinforced by s 175 of ITAA 36, which provides for the conclusiveness and validity of the assessment.

This paper critically evaluates the approach to tax disputes in New Zealand. It concludes that while the identified flaws of the former regime were very real and the new regime has some provided certain benefits, there are nevertheless flaws in the new regime. The paper also provides insights for potential reform in the Australian system, utilising the best features of the NZ regime.

2 SMALL TAX DISPUTES RESOLUTION IN NEW ZEALAND – MAKING TAXPAYERS ‘WINNERS’ NOT ‘LOSERS’

MELINDA JONE33 AND ANDREW MAPLES34, CANTERBURY UNIVERSITY

In his 2011 comparative study, Maples35 observes that, despite the then recent positive administrative changes implemented by Inland Revenue (including facilitated conferences and the ability to opt-out of the dispute process after the conference phase), “these changes do not alter the fact that the [New Zealand] dispute process essentially provides ‘a one size fits all’ procedure for tax disputes, irrespective of their complexity and the amount in dispute.” Moreover, as noted by various commentators both prior to and following Maples’ study, taxpayers with small tax disputes are either ‘burnt off’ through the dispute process or may not even challenge Inland Revenue’s position.

Maples’ study was undertaken against the backdrop of the abolition of the small claims jurisdiction of the Taxation Review Authority.

Fast forward six years – what has changed for small tax dispute resolution? While no substantive changes have occurred in the New Zealand (NZ) dispute resolution process since the 2011 study; the three other countries considered by Maples have all subsequently implemented changes focussed on, or potentially benefitting, small tax disputes. Similar to NZ, Australia abolished the Small Taxation Claims Tribunal of the Taxation Appeals Division of the Administrative Appeals Tribunal (AAT) in 2015. However, with effect from 1 April 2014 the Australian Taxation Office instituted in-house facilitation for small businesses and individuals with less complex disputes at the audit and objection stages. In addition, while not specifically aimed at small tax disputes, the early assessment and resolution process for all cases lodged with the AAT (effective July 2013) and more recently, the fast intensive triage process (effective from March 2017), have the potential to lead to more efficient dispute resolution generally.

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In the United Kingdom, in addition to the First-tier Tribunal, which since 2009 has divided cases into four categories including ‘Basic’ cases (encompassing small tax disputes subject to an informal hearing), Her Majesty’s Revenue and Customs (HMRC) implemented alternative dispute resolution (ADR) in 2013. This is available at any stage of the process for taxpayers across all HMRC business lines (including non-large business taxpayers).

Turning to Canada, two developments are noted by the authors. First, in 2013, the monetary limits for access to the informal appeal procedure in the Tax Court of Canada were increased from the C$12,000 and C$24,000 thresholds for federal tax (and penalties) in dispute and dispute loss amounts, respectively, to C$25,000 and C$50,000, respectively. Second, a triage-type process for objections to the Canada Revenue Agency, based on level of complexity, was introduced.

This present study has been extended to consider current small tax dispute processes in the United States. The authors find that a range of options exist for taxpayers in this category, including the Small Tax Case procedure in the Tax Court and Small Business/Self-Employed Fast Track Settlement offered by the Internal Revenue Service’s Appeals Office. The authors conclude by considering what lessons NZ can learn from the practices of the four jurisdictions analysed.

7C – TAX ISSUES

1 HUMAN FLOURISHING, TAXATION, AND ENGAGEMENT WITH URBAN HOUSING PROBLEMS
JONATHAN BARRETT36, VICTORIA UNIVERSITY OF WELLINGTON

Housing problems are commonly experienced in major cities in Australasia and the wider Pacific Rim. Both property ownership and renting in these, some of the world’s most ‘liveable’, cities has become unaffordable for many middle-class people, especially the young. In extreme, but not uncommon cases, unaffordability of accommodation leads to homelessness. Conversely, investment properties may be left vacant. Taxes are often proposed as ‘magic bullet’ solutions to these problems but such proposals are typically ad hoc and lack a coherent philosophical basis. Drawing on a human flourishing conception of rights, this paper seeks to provide such a foundation. It is argued that, since shelter is a fundamental human need and right, radical taxation measures might be considered as ways of contributing to solving housing problems. The potential role of existing subnational taxes is first considered, and, then, attention is given to hypothetical measures. It is not argued that the radical tax measures discussed are politically plausible. Nevertheless, proposing a non-traditional theoretical basis for taxation is a useful rhetorical device which may help to shift debate on taxation and social problems in new directions.

2 CORPORATE TAX INCIDENCE IN INDIA
SAMIKSHA AGARWAL AND LEKHA CHAKRABORTY37, NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY

In an economy, the incidence of a corporate tax can fall on both factors of production, capital and labor, in different proportions. It has been argued that in an economy, higher corporate taxes lead to lower capital formation, hence lower labor productivity and lower wages. At the same time, in an open economy where capital is allowed to flow across the borders, imposition of corporate tax affects the capital investments of the firms. Capital moves from high tax to low tax countries and higher capital formation in low tax countries leads to higher capital-labor ratios, higher labor productivity and hence higher wages. As a result, the burden in the high tax country falls on both capital and labor. Harberger (2006) asserts labor bears most of the burden of the corporate taxes in an open economy.

Our paper attempts to measure the incidence of corporation tax in India using a general equilibrium framework. It uses data for 5666 (BSE & NSE listed) Indian corporate firms from 2000–2015 to assess the link between corporate taxes, capital and labor. It finds both the relative burdens borne by capital and labor and the efficiency effects of corporate tax. Seemingly Unrelated Regression Techniques and Arellano-Bond estimation method has been used. In contrast to various studies, empirical investigation in this paper suggests that capital bears most of the burden of the corporate taxes. Hence, in the Indian context, the corporate tax policy plays a major role in deciding the capital investments.

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